

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
COMMONWEALTH EDISON COMPANY,)
)
) No. 10-0467
Proposed general increase in)
electric rates. (Tariffs)
filed June 30, 2010.))

Chicago, Illinois
January 14th, 2011

Met, pursuant to notice, at 9:00 a.m.

BEFORE :

MS. CLAUDIA SAINSOT and MR. GLENNON DOLAN,
Administrative Law Judges

1 APPEARANCES:

2 ROONEY, RIPPIE & RATNASWAMY, LLP, by
3 MR. E. GLENN RIPPIE
4 MR. JOHN P. RATNASWAMY
5 MS. CARLA SCARSELLA
6 350 West Hubbard Street
7 Suite 430
8 Chicago, Illinois 60654
9 (312) 447-2828

10 -and-

11 MR. RICHARD BERNET
12 MR. BRADLEY R. PERKINS
13 MR. EUGENE BERNSTEIN
14 MR. MICHAEL S. PABIEN
15 10 South Dearborn Street
16 49th Floor
17 Chicago, Illinois 60603

18 -and-

19 EIMER STAHL KLEVORN & SOLBERG, LLP, by
20 MR. SCOTT C. SOLBERG
21 224 South Michigan Avenue
22 Suite 1100
23 Chicago, Illinois 60604
24 (312) 660-7600
25 all appearing on behalf of Commonwealth Edison
26 Company;

27 OFFICE OF THE GENERAL COUNSEL, by
28 MR. JOHN FEELEY
29 MS. MEGAN C. McNEILL
30 MS. JENNIFER L. LIN
31 160 North LaSalle Street
32 Suite C-800
33 Chicago, Illinois 60601
34 (312) 793-8824
35 appearing on behalf of Staff;

36

1 APPEARANCES CONT'D:

2 BALOUGH LAW OFFICES, by
3 MR. RICHARD C. BALOUGH
4 MS. CHERYL DANCEY BALOUGH
5 1 North LaSalle Street
6 Suite 1910
Chicago, Illinois 60602-3927
(312) 499-0000
appearing on behalf of Chicago Transit
Authority;

7 ILLINOIS ATTORNEY GENERAL'S OFFICE, by
8 MS. KAREN L. LUSSON
9 MS. JANICE A. DALE
10 MR. MICHAEL R. BOROVIK
11 MS. SUSAN L. SATTER
12 100 West Randolph Street
13 11th Floor
Chicago, Illinois 60601
14 appearing on behalf of the People of the State
15 of Illinois;

16 DLA PIPER, LLP, (US), by
17 MR. CHRISTOPHER J. TOWNSEND
18 MR. CHRISTOPHER N. SKEY
19 MR. MICHAEL R. STRONG
20 203 North LaSalle Street
21 Suite 1900
Chicago, Illinois 60601
(312) 368-4039
appearing on behalf of REACT;

22 MS. CHRISTIE HICKS
MS. KRISTIN C. MUNSCH
309 West Washington Street
Suite 800
Chicago, Illinois 60606
(312) 263-4282
appearing on behalf of the Citizens Utility
Board;

1 APPEARANCES CONT'D:

2 JENKINS AT LAW, LLC, by
3 MR. ALAN R. JENKINS
4 2265 Roswell Road
Suite 100
Marietta, Georgia 30062
appearing on behalf of The Commercial Group;

5 JOHN B. COFFMAN, LLC, by
6 MR. JOHN B. COFFMAN
871 Tuxedo Boulevard
7 St. Louis, Missouri 63119-2044
appearing on behalf of AARP;

8 MR. ROBERT KELTER
9 35 East Wacker Drive
Suite 1600
10 Chicago, Illinois 60601
appearing on behalf of Environmental Law &
11 Policy Center;

12 ROWLAND & MOORE, LLP, by
13 MR. STEPHEN J. MOORE
200 West Superior Street
Suite 400
14 Chicago, Illinois 60610
(312) 803-1000
15 appearing on behalf of Natural Resources
Defense Council and Dominion Retail, Inc.;

16 LUEDERS, ROBERTSON, KONZEN, by,
17 MR. ERIC ROBERTSON
1939 Delmar Avenue
18 P.O. Box 735
Granite City, Illinois 62040

19 -and-

20 MR. CONRAD R. REDDICK
21 1015 Crest Street
Wheaton, Illinois 60187-6271
22 both appearing on behalf of IIEC;

1 APPEARANCES CONT'D:

2 HINSHAW & CULBERTSON, LLP, by
3 MR. EDWARD R. GOWER
4 400 South Ninth Street
Suite 200
Springfield, Illinois 62701
appearing on behalf of Metra.

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21 SULLIVAN REPORTING COMPANY, by
Amy M. Spee, CSR
Alisa Sawka, CSR, RPR
22 Steve Stefanik, CSR

1		<u>I N D E X</u>				
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
3	KARL MCDERMOTT					
		1359	1360			
4			1388			
			1392			1407
5	RALPH CAVANAGH					
		1410	1412			
6			1497			
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7			1507			
			1510	1511	1514	
8	MICHAEL BROUSCH					
		1516	1521			
9			1525	1574		
	DAVID EFFRON					
10		1584	1588			
	GEOFFREY HEWINGS					
11		1604	1611			
	HAROLD TERHUNE					
12		1615	1620			
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	MICHAEL BORN					
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1	<u>E X H I B I T S</u>		
2	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
3	NRDC		
	#1.0		1360
4	#2.0,3.0		1412
	AG		
5	#12	1376	
	#13	1431	1496
6	#14	1454	
	AG/CUB		
7	#1.0,1.1-1.8,7.0,		1521
	7.1-7.6&12.0		1521
8	#2.0,2.1,8.1&8.1		1588
	COMED		
9	#18		1579
	#19	1595	
10	#43.0,43.1,43.2&69.0		1610
	#34.0,34.1,34.2,67.0(R)		1691
11	67.1(R)67.2		1691
	REACT		
12	#3.0-C&6.0		1618
	#21	1700	
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1 JUDGE DOLAN: All right. By the direction and
2 authority of the Illinois Commerce Commission, I call
3 Docket No. 10, dash, 0467, Commonwealth Edison, a
4 proposed general increase in electric rates to order.

5 Will the parties please identify
6 themselves for the record.

7 MR. RIPPPIE: On behalf of Commonwealth Edison
8 Company, Glenn Rippie, John Ratnaswamy and John
9 Rooney of Rooney, Rippie & Ratnaswamy, LLP, 350 West
10 Hubbard Street, Suite 430, Chicago, Illinois 60654.

11 MR. BERNET: Also on behalf of Commonwealth
12 Edison Company, Richard Bernet, Brad Perkins, Gene
13 Bernstein and Mike Pabien, 10 South Dearborn, Suite
14 4900, Chicago 60603.

15 MR. MOORE: Appearing on behalf of Natural
16 Resources Defense Council and Dominion Retail, Inc.,
17 Stephen Moore of the Law Firm of Rowland & Moore,
18 LLP, 200 West Superior Street, Suite 400, Chicago,
19 Illinois 60654.

20 MS. LUSSON: On behalf of the People of the
21 State of Illinois, Karen Lusson, L-u-s-s-o-n,
22 100 West Randolph, 11th Floor, Chicago, Illinois

1 60601.

2 Also appearing on behalf of the
3 People, Michael Borovik, B-o-r-o-v-i-k, Janice Dale,
4 D-a-l-e, and Susan Satter, S-a-t-t-e-r.

5 MR. JENKINS: Good morning. Alan Jenkins for
6 The Commercial Group, 2265 Roswell Road, Marietta,
7 Georgia 30062.

8 MR. COFFMAN: Appearing on behalf of AARP,
9 John B. Coffman, 871 Tuxedo Boulevard, St. Louis,
10 Missouri 63119.

11 MS. MUNSCH: On behalf of the Citizens Utility
12 Board, Kristin Munsch and Christie Hicks, 309 West
13 Washington, Chicago 60606.

14 MR. KELTER: On behalf of the Environmental Law
15 & Policy Center, Robert Kelter, 35 East Wacker, Suite
16 1600, Chicago 60601.

17 MR. SKEY: Good morning, your Honors.
18 Christopher Skey, Christopher Townsend and Michael
19 Strong on behalf of the Coalition to Request
20 Equitable Allocation of Costs Together, the REACT
21 Coalition, the law firm of DLA Piper, 203 North
22 LaSalle, Chicago, Illinois 60601.

1 MR. REDDICK: Appearing for the Illinois
2 Industrial Energy Consumers, Conrad R. Reddick, 1015
3 Crest Street, Wheaton, Illinois 60189, and Eric
4 Robertson of Lueders, Robertson & Konzen, 1939 Delmar
5 Avenue, Granite City, Illinois 62040.

6 MS. McNEILL: Appearing on behalf of Staff
7 witnesses of the ICC, Megan McNeill, John Feeley and
8 Jennifer Lin, 160 North LaSalle, Suite C-800,
9 Chicago, Illinois 60601.

10 JUDGE DOLAN: All right. Are there any other
11 appearances over the Internet?

12 Then let the record reflect no other
13 appearances.

14 JUDGE SAINSOT: Counsel for NRDC.

15 MR. MOORE: Yes, I'd like to call McDermott.

16 JUDGE DOLAN: All right. Mr. McDermott.

17 (Witness sworn.)

18 JUDGE SAINSOT: You may be seated.

19 THE WITNESS: Thank you.

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1 KARL A. McDERMOTT,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MR. MOORE:

7 Q Would you please state your name.

8 A Karl, with a K, middle initial A,
9 McDermott, M-c-D-e-r-m-o-t-t.

10 Q And by whom are you employed?

11 A The University of Illinois in Springfield
12 and NERA. And I'm testifying on behalf of the NRDC.

13 Q I show you what has been marked for
14 identification as NRDC Exhibit No. 1.0 entitled The
15 Direct Examination of Karl McDermott consisting of
16 15 pages of testimony and four attachments.

17 Did you prepare this testimony?

18 A Yes, I did.

19 Q And if asked the same questions today,
20 would you give the same answers?

21 A Yes, I would.

22 MR. MOORE: At this time, I offer Mr. McDermott

1 for cross-examination.

2 JUDGE DOLAN: Well, do you want to introduce

3 his testimony into the record?

4 MR. MOORE: Yes. I'm sorry. And I would like

5 to move for the record -- his testimony into the

6 record.

7 JUDGE DOLAN: Okay. Is there any objection?

8 MR. BERNET: No objection.

9 JUDGE DOLAN: All right. Then NRDC 1.0 will be

10 admitted into the record. Thank you.

11 (Whereupon, NRDC Exhibit No. 1.0

12 was admitted into evidence.)

13 JUDGE DOLAN: Ms. Lusson.

14 CROSS-EXAMINATION

15 BY

16 MS. LUSSON:

17 Q Good morning.

18 A Good morning.

19 Q Now, you are the Ameren distinguished

20 professor of business and government at the

21 University of Illinois; is that correct?

22 A Springfield, yes.

1 Q In Springfield.

2 And, now, as the Ameren distinguished
3 professor, is that chair partially or in some way
4 funded by Ameren, the utility?

5 A What Ameren, the utility, has done is given
6 money to the University's fund and the fund then
7 administers that and runs the chair.

8 Q Okay. And does that funding go to the
9 regulatory center that you oversee at the University?

10 A The funds that are there are available for
11 myself to use for transportation, to hire graduate
12 students and things of that nature.

13 Q Okay. If you could turn to Line 37 of your
14 testimony.

15 Now, you state that -- reference a
16 disincentive for utilities to promote a strong
17 conservation ethic.

18 Do you see that there?

19 A Yes, I do.

20 Q And, as I understand your testimony,
21 removing the disincentive concept is the primary
22 impetus for your recommendation to implement

1 decoupling?

2 A Yes.

3 Q And is this removing the disincentive goal
4 essentially the same point that you're making at Line
5 68 where you reference the goal of breaking the link
6 between revenues and sales?

7 A Yes.

8 Q Now, have you identified in your
9 testimony -- or can you identify today any instance
10 where ComEd has acted upon this disincentive that you
11 reference by failing to promote conservation?

12 A Well, it's hard to prove the negative in
13 that sense. I don't know that they couldn't do more.

14 Q Okay. And so the disincentive then is tied
15 to the notion that, perhaps, they can do more?

16 A Well, the fact is that if they sell more
17 electricity, they have an opportunity to recover
18 their fixed costs. And if they sell less, they don't
19 have that opportunity. They don't recover it. So by
20 employing the decoupling mechanism, we remove that
21 disincentive.

22 Q Has ComEd, if you know, implemented every

1 DSM -- and that's demand side measure -- demand side
2 management measure -- that has been approved by the
3 Commission for implementation in Illinois?

4 A I'm not aware of all of the efforts that
5 they've undertaken.

6 Q Have you had a chance to review the --
7 ComEd's Energy Efficiency Plan for Program Years 1
8 through 3?

9 And I believe we're in the third year
10 of that plan.

11 A I've had a chance to review it, but not in
12 any great detail.

13 Q How about the plan that they recently
14 submitted to the Commission in Docket 10-0570, which
15 is their plan for Years 4 through 6?

16 A Again, I've looked at it.

17 JUDGE SAINSOT: What plan is this, Ms. Lusson?

18 MS. LUSSON: This would be the Company's Energy
19 Efficiency Plan for Years -- Plan Years 4 through 6.
20 That would be under -- the statutory plan under
21 Section 8, dash, 103.

22

1 BY MS. LUSSON:

2 Q Have you had a chance to review the
3 recently issued evaluators' reports regarding
4 Commonwealth Edison's energy efficiency performance
5 in Year 2 of its Energy Efficiency Plan?

6 A Again, I've looked at it.

7 Q And do you recall when that was issued?

8 A No.

9 Q And do you recall having revie- -- you
10 indicated you did review that plan, the recently
11 issued evaluation report?

12 A I've reviewed a number of documents that
13 the Company has been putting out. That's...

14 Q And do you recall any conclusion that the
15 Company has not been meeting its statutory --
16 statutorily required energy efficiency goals?

17 A Well, those are the statutory efficien- --
18 because they're statutorily set efficiency goals,
19 that doesn't mean we couldn't go beyond that.

20 Q Now, I think you indicated you did review
21 the Company's plan submitted in 10-0570, which is for
22 Years 4 through 6; is that true?

1 A Again, I took a look at them, yes.

2 Q And do you recall if the Company indicated
3 in that plan that, in fact, they would have
4 difficulty meeting the goals -- the statutory goals
5 for Year 5 and would not meet those goals for Year 6,
6 if you recall, because of the spending cap that's
7 also included in the legislation?

8 A That's my understanding. I think you're
9 correct.

10 Q Now, your testimony does not specifically
11 identify or quantify any kind of incremental energy
12 efficiency investments or activities that ComEd would
13 fund and support should decoupling be approved, does
14 it?

15 A No. No, ma'am.

16 Q Are you aware of any specific commitment
17 made by ComEd to support such additional measures or
18 increase spending should decoupling be approved?

19 A I am not aware of any, no.

20 Q And I think in response to some earlier
21 questions, you referenced a familiarity with
22 Section 8, dash, 103 of the Public Utilities Act,

1 which is the section that lays out the statutorily
2 required energy saving goals for electric utility
3 energy efficiency plans?

4 A Yes.

5 Q A long question.

6 A Yes.

7 Q Okay. And would you agree that Section 8,
8 dash, 103 includes a cap on the energy efficiency
9 expenses that can be recovered from ratepayers?

10 A That's my understanding, yes.

11 Q And would you agree that absent statutory
12 change, ComEd would either have to seek other -- some
13 sort of other additional funding for energy
14 efficiency measures assuming it desired to do more or
15 require shareholders to pay for those additional
16 measures?

17 A I'm sorry. Could you --

18 Q Would you agree that given the statutory
19 cap and absent any sort of statutory change to that
20 cap in Section 8, dash, 103, that ComEd would be
21 required to seek some sort of additional funding
22 sources for any increased energy efficiency plans or

1 ask shareholders to fund those?

2 A How they would do that would be up to them.

3 Q But you would agree that those additional
4 measures would not come from ratepayers given the
5 language in Section 8, dash, 103 -- or could not come
6 from ratepayers?

7 A I believe that's correct.

8 Q If you could turn to your Exhibit 1.2 that
9 lists the various different state regulatory
10 mechanisms including decoupling.

11 A I have that.

12 Q Now, is it correct that this exhibit is a
13 combined or a composite snapshot of various different
14 state regulatory mechanisms for both electric and gas
15 utilities?

16 A That's correct.

17 Q And is the purpose of this exhibit to show
18 broadly the specific states that have adopted a
19 variety of different new regulatory mechanisms over
20 the past several years?

21 A That's correct.

22 Q Would you agree that just because a state

1 has adopted or allows a particular type of regulatory
2 mechanism, it doesn't necessarily mean that each and
3 every utility in that state has an active version of
4 that mechanism in place?

5 A That's correct.

6 Q And as a former regulator yourself, would
7 you agree that the regulatory commissions can -- can
8 make broad policy statements about the merits of
9 particular regulatory mechanisms, but that ultimately
10 specific programs have to be forwarded and sponsored
11 by utilities or some other party and then vetted on
12 their factual merits in a proceeding before they
13 could be adopted?

14 A That's correct.

15 Q Now, you're also sponsoring NRDC
16 Exhibit 1.3. That consists of two pages.

17 Do you have a copy of that?

18 A Yes, I do.

19 Q And Page 1 provides a table that lists the
20 number of electric decoupling mechanisms, while
21 Page 2 provides a table that lists what is labeled as
22 Gas Fixed Cost Recovery Mechanisms; is that right?

1 A That's correct.

2 Q And looking at Page 1, you have a number of
3 states that have a check by them. And I'm assuming
4 that those are states that have an electric revenue
5 decoupling mechanism in place or at least one
6 of their -- for at least one of their jurisdictional
7 electric utilities?

8 A That's correct.

9 Q And you also have a number of other states
10 that have "pending" listed as their revenue
11 decoupling status for electric utilities; is that
12 correct?

13 A That's correct.

14 Q Now, about halfway down your table, you
15 have Indiana listed as "pending" for electric
16 decoupling, right?

17 A Yes.

18 Q Now, as I understand it, the proceedings in
19 Indiana involve Vectren South, the former Southern
20 Indiana Gas & Electric Company, and it has proposed
21 revenue decoupling but that that proposal has not
22 been accepted by the Commission as of yet; is that

1 correct?

2 A Yes, that's why it's pending.

3 Q Now, you've submitted testimony in that
4 case, rebuttal testimony; is that right?

5 A Yes.

6 Q And that mechanism is being challenged by
7 the Office of Utility Consumer Counselor and the
8 Industrial Energy Users Group?

9 A I believe that's -- at least those two.

10 Q Looking at New Hampshire, again, that's
11 listed as "pending"; is that right?

12 A Yes.

13 Q And is that the case -- a case involving
14 National Grid, which has proposed revenue decoupling,
15 if you know?

16 A I believe that's...

17 Q And, again, none of those have been
18 approved yet?

19 A That's correct. This document was put
20 together in the summer. So there may be some
21 changes, but I don't believe they -- the status has
22 changed dramatically in any of the states.

1 Q And do you know if National Grid's
2 affiliate in Rhode Island had a decoupling proposal
3 that was rejected by the Rhode Island Commission, if
4 you know?

5 A Offhand, I know they've been submitting
6 them in a number of states. I'm not sure of all the
7 status.

8 Q And in New Jersey, can you tell me which
9 electric utility is requesting decoupling?

10 Is it the Atlantic City Electric
11 Company?

12 A I believe that's correct.

13 Q And would you accept, subject to check,
14 that the Atlantic City Electric Company has since
15 withdrawn its decoupling proposal?

16 A Subject to check, sure.

17 Q And that was withdrawn on November --
18 November 20th, 2009, subject to check?

19 A Subject to check.

20 Q And moving on to Utah, would you agree that
21 in that instance, the utility, Rocky Mountain Power,
22 did not request revenue decoupling, but instead it

1 was proposed by a third party similar to what NRDC is
2 doing in this case?

3 A I believe that's correct.

4 Q And would you accept, subject to check,
5 that the Utah Commission has rejected this revenue
6 decoupling proposal in Docket No. 09-03- -- 09-03523?

7 A Was it rejected or just did not decide to
8 implement it at this time? I believe they're still
9 interested in it, but they didn't want to employ it
10 in this particular case.

11 Q Okay. So then that would be -- the word
12 "pending" should not be there then; is that correct?

13 A I believe that's the updates that would
14 have to occur.

15 Q And moving on to Arizona, would you agree
16 that -- well, first, can you identify an electric
17 utility in Arizona that has requested a specific
18 electric decoupling mechanism as opposed to a gas
19 utility?

20 A I don't believe any electrics have at the
21 moment. What was pending was the State's review, and
22 as our other witness, Ralph Cavanagh, has pointed

1 out, the Commission has just made a determination
2 that the companies can come forward. They've set up
3 their rules.

4 Q And would you agree that Arizona has
5 rejected revenue decoupling at least twice for
6 Southwestern Gas and once for UNS Gas Company?

7 A That's my understanding.

8 Q And can you identify the specific electric
9 utility that has a revenue decoupling proposal under
10 consideration with the New Mexico Regulatory
11 Authority?

12 A I don't remember the exact Company that's
13 in that docket.

14 Q Now, you also list Wisconsin there as a
15 state that's adopted revenue decoupling.

16 Do you know -- or would you accept,
17 subject to check, that that was Wisconsin Public
18 Service Company?

19 A I believe that's correct.

20 Q And did you happen to review Wisconsin
21 Public Service Company's recent rate case file --
22 filing prior to preparing your prefiled testimony in

1 this docket?

2 A No, ma'am.

3 Q Would you agree that for -- except subject
4 to check, that Wisconsin Public Service Company has
5 requested that its revenue decoupling program be
6 discontinued and replaced with an alternative
7 regulatory method?

8 MR. MOORE: That's interpreting, I guess, a
9 document that will speak for itself. So if the
10 Attorney General wants to put something in the brief
11 about that, I'm not proposing anything subject to
12 check.

13 JUDGE SAINSOT: Well -- and that's a fact. So
14 it wouldn't go in a brief.

15 Sustained.

16 BY MS. LUSSEN:

17 Q So prior to testifying here this morning,
18 did you double-check the accuracy of the listings in
19 H1 of 2 on Exhibit 1.3?

20 A I have not done an update.

21 Q And how about for 1.2, did you check to see
22 if those were, in fact, still in place as described

1 in this table?

2 A No, I have not done an update. That was --
3 as I said, the exhibit is designed to at least give a
4 snapshot at that time of what was happening around
5 the country.

6 Q Now, again, looking back at Exhibit 1.3,
7 Page 2, toward the bottom of that page you have
8 listed Washington twice as having gas fixed cost
9 recovery mechanisms; is that right?

10 A Yes, that's according to the American Gas
11 Association.

12 Q And the mechanism there is revenue
13 decoupling and its been in place on a pilot basis for
14 both Cascade and Avista; is that correct?

15 A That's my understanding from the AGA.

16 Q Now, it's correct that you don't have
17 Washington listed there for electric utilities on
18 your previous Page 1-point -- in 1.3; is that right?

19 A That's correct.

20 Q Do you know whether or not the Washington
21 Utilities and Transportation Commission was required
22 by its legislature to review revenue decoupling for

1 both its gas and electric utilities?

2 A No, I'm not aware.

3 Q So you're not aware then of the Washington
4 Utilities and Transportation Commission issuing a
5 report, its findings on revenue decoupling for gas
6 and electric utilities issued on November 2nd, 2010?

7 A That's correct. I have not seen that.

8 Q I want to show you what I'll mark as AG
9 Cross-Exhibit 12.

10 (Whereupon, AG Cross-Exhibit
11 No. 12 was marked for
12 identification, as of this
13 date.)

14 BY MS. LUSSEN:

15 Q AG Cross-Exhibit 12 is a report before the
16 Washington State Utilities and Transportation
17 Commission. It's entitled Report and Policy
18 Statement on Regulatory Mechanisms Including
19 Decoupling to Encourage Utilities to Meet or Exceed
20 Their Conservation Targets.

21 If you would, would you at first
22 accept, subject to check, that this is an accurate

1 copy of that order issued on November 4th, 2010?

2 A I can.

3 Q If you look -- if you would, turn to
4 Page 12 of that report.

5 Now, Page 12 lists three different
6 mechanisms that the Washington Commission examined
7 and the first is what's called limited decoupling,
8 which is described as allowing utilities to recover
9 only lost revenues associated with its energy
10 efficiency programs as well as any educational and
11 market transformation programs.

12 Do you see that?

13 A Which one are you referring to? There's
14 just one called relationship of bound margin to lost
15 margin.

16 MR. RIPPIE: Your Honors, I'm not exactly sure
17 how this report is going to be used, but the witness
18 has testified that he has not seen it. So it can't
19 be used for impeachment.

20 To the extent this is going to be read
21 into the record or offered for substantive
22 objection -- for substantive evidence, it's classic

1 hearsay. The author of the report is not present, is
2 not subject to cross-examination. The witness has
3 not adopted or authenticated it and it doesn't fall
4 under any of the exceptions to the hearsay rule in
5 the Illinois Rules of Evidence. So we would object
6 to having this document read into the record or have
7 it used for substantive evidence.

8 If the intention is just to use it to
9 guide questions from this witness' own knowledge, I'm
10 fine; but we're now reading it into the record.

11 MS. LUSSON: Your Honors, Mr. McDermott's
12 testimony lists a number of jurisdictions that have
13 considered, accepted or are looking at revenue
14 decoupling. Among those is the State of Washington.

15 This is an order involving the State
16 of Washington -- the Washington Commission's specific
17 examination of decoupling as required by the
18 legislature.

19 There are a number of findings in this
20 order. I'm not asking Mr. McDermott to -- or stating
21 that the conclusions are correct. However, I do
22 think it's appropriate for me to highlight some of

1 these conclusions and indicate where Mr. -- whether
2 or not these conclusions are contradictory to the
3 conclusions in Mr. McDermott's testimony.

4 MR. RIPPIE: With -- if I may amend my
5 objection, if it is strictly understood that the sole
6 purpose of this is impeachment of the witness, I will
7 withdraw my objection; but it would be improper to
8 admit or cite these quotations or any portion of this
9 report as substantive evidence in the absence of any
10 opportunity for any other party, including the
11 Company, to cross-examine the author or sponsor of
12 this report.

13 JUDGE SAINSOT: I'm just -- let me just ask you
14 this, Ms. Lusson: Are you using this for -- this
15 report or -- I guess, it looks like an order to me --
16 but are you using it to challenge his recommendations
17 or his expert opinion?

18 MS. LUSSON: I'm highlighting the fact that the
19 Washington Commission, which has done an exhaustive
20 investigation as required by the legislature on
21 decoupling, has made conclusions that are in
22 contradiction of Dr. McDermott's.

1 I'm not stating whether or not the
2 Washington Commission's conclusions are right; but,
3 nevertheless --

4 JUDGE SAINSOT: So your answer to that question
5 is "yes" then?

6 MS. LUSSON: Yes.

7 JUDGE SAINSOT: Okay. You can proceed.

8 MS. LUSSON: Thank you.

9 BY MS. LUSSON:

10 Q Mr. McDermott -- I apologize -- I gave you
11 the wrong page reference. It's actually Page 8.

12 Would you agree that the Washington
13 Commission examined three different forms of -- well,
14 it examined limited decoupling, which it describes as
15 allowing utilities to recover only lost revenues
16 associated with its energy efficiency programs as
17 well as any educational and market transformation
18 programs.

19 Do you see that?

20 A Yes, I see it.

21 Q And this is similar to a lost base revenues
22 recovery mechanism except that it adds estimated

1 revenue losses from market transformation; is that
2 right?

3 A If you say that's what it says. I haven't,
4 as I said, read this document. I don't know for sure
5 what it's referring to.

6 Q Okay. And moving on to the one described
7 as full decoupling, which is designed to minimize the
8 risk to both utilities and to ratepayers of
9 volatility in average use per customer by class
10 regardless of cause including the effects of weather.

11 A That's what it says there.

12 Q And would you agree that that is a --
13 references a per customer revenue decoupling
14 mechanism, which is the kind of right renewed
15 decoupling mechanism that the NRDC is endorsing in
16 this case?

17 A Having not read the report, it seems to be
18 that.

19 Q And then the third policy option is
20 something called specific incentives that reward
21 utilities for meeting their energy efficiency targets
22 or meeting those targets early.

1 Is that what it states there on
2 Page 9?

3 A That's what it states.

4 Q So focusing on the first two options there,
5 if you would look -- read Reference Paragraph --
6 Paragraph 19, which appears on Page 13.

7 And it states, At this time, and for
8 the reasons expressed below, we propose to confine
9 the limited decoupling option -- which is the one
10 described as the per customer decoupling option,
11 similar to what NRDC has proposed -- to confine the
12 limited decoupling option to natural gas utilities.

13 Do you see that?

14 A I see.

15 MR. MOORE: I object to the question because it
16 includes similar to what NRDC proposed and I believe
17 his answer previously was a little unclear.

18 MS. LUSSON: Let me rephrase the question,
19 Mr. McDermott.

20 BY MS. LUSSON:

21 Q To the extent that limited decoupling is
22 described as a mechanism that is designed to minimize

1 the risk to both the utilities and to ratepayers of
2 volatility in average use per customer by class
3 regardless of cause, is that the kind of decoupling
4 mechanism that you're proposing in this docket?

5 A The limited one?

6 Q Yes.

7 A We're not --

8 MR. MOORE: If I may raise the objection to --
9 Mr. Cavanagh really was the one that proposed the
10 exact mechanism and got into the details of it. So I
11 think he would be the more appropriate person to
12 question about this order and how it relates to the
13 exact way that NRDC propose things. That's the one
14 really on overall policy matters in issues such as
15 the relationship to the Court decision recently
16 and -- but not the exact specifics of the proposal.

17 So I would prefer that Ms. Lusson --

18 JUDGE SAINSOT: I think he's got a point there.
19 Mr. Cavanagh would be the witness.

20 BY MS. LUSSON:

21 Q May I ask the witness, are you endorsing
22 the revenue per customer -- revenue decoupling

1 mechanism that's being proposed by Mr. Cavanagh in
2 your testimony?

3 A Am I endorsing it?

4 Q Yes.

5 A I believe that it is a full decoupling
6 mechanism that Mr. Cavanagh has been advocating and
7 then that's what the NRDC is proposing in this case.

8 Q And do you have an opinion as to whether
9 that should be implemented for ComEd?

10 A I believe that a decoupling proposal would
11 be superior to the SFV.

12 Q And what kind of decoupling proposal?

13 Because you would agree, wouldn't you,
14 that there are many kinds of decoupling proposals?

15 A There are.

16 Q And do you have one -- a specific one in
17 mind for the purposes of this docket?

18 A Well, for the purposes of this docket,
19 Mr. Cavanagh has offered the full decoupling.

20 Q And do you endorse that or have an opinion
21 about it?

22 JUDGE SAINSOT: Ms. Lusson, he's not the right

1 witness for this.

2 MS. LUSSON: Well, I guess I'm unclear as to
3 whether or not he is -- has an opinion about per
4 customer revenue decoupling as proposed by
5 Mr. Cavanagh.

6 MR. MOORE: I could just read --

7 JUDGE DOLAN: Mr. Moore, could you speak into
8 your microphone.

9 MR. MOORE: -- the proposed decoupling
10 program --

11 JUDGE SAINOT: Mr. Moore, please speak up.

12 MR. MOORE: Is this on?

13 Okay. Now it's on.

14 Page 2 at the bottom of the page,
15 Line 41, NRDC's proposed decoupling program is
16 consistent with the regulatory paradigm and policy
17 and, in particular, with the Illinois regulatory
18 paradigm.

19 That is the purpose and overall what
20 Mr. McDermott is testifying to.

21 BY MS. LUSSON:

22 Q Mr. McDermott, when you say that, NRDC's

1 proposed decoupling program is consistent with the
2 regulatory paradigm and policy and, in particular,
3 with the Illinois regulatory paradigm, what does that
4 mean?

5 A Well, that there's a couple of different
6 levels at which that exists. One, is that the
7 Commission has approved decoupling programs for
8 utilities in this state. And in the case of Peoples,
9 it's very similar to what Mr. Cavanagh has offered in
10 this case.

11 Q So sitting here today, just so the record
12 is clear, you're not necessarily endorsing revenue
13 per customer -- per customer revenue decoupling as
14 proposed by Mr. Cavanagh?

15 A I mean, my purpose was to provide a broader
16 evaluation of the policy questions that are there for
17 the specifics that Mr. Cavanagh has offered.

18 Q So is that a "no" or...?

19 A The purpose of my testimony was to look at
20 the difference between straight fixed/variable and
21 decoupling in general and where I'm offering the
22 decoupling as a superior mechanism to incent

1 conservation efforts.

2 Q So you, yourself, have done no specific
3 evaluation of the financial needs of ComEd and
4 whether or not per customer revenue decoupling is
5 appropriate for -- to serve its financial needs or,
6 indeed, allow it to recover all of its fixed costs,
7 including its requested profit level?

8 A I have not done a financial analysis, no.

9 Q Finally, Mr. McDermott, I think you
10 testified earlier that because a state makes a policy
11 decision allowing a particular type of policy
12 mechanism, it's not always the case that every
13 utility in the state has adopted or should adopt that
14 mechanism, would you agree?

15 A Well, that's something that the Commission
16 will look at on a case-by-case basis. And the fact
17 that -- you know, associated with those particular
18 cases.

19 Q And do you know the specific number of
20 electric utilities that currently have a revenue
21 decoupling mechanism in place across the country?

22 A Given that I haven't updated the numbers in

1 the documents in this exhibit, I don't have a
2 specific number.

3 Q And do you know how many investor-owned
4 electric utilities there are in the United States?

5 A Offhand -- that changed.

6 Q Would you agree, subject to check, that
7 there are hundreds of investor-owned electric
8 utilities in the United States?

9 A There are a hundred major companies.

10 Q Okay.

11 MS. LUSSON: Thanks, Mr. McDermott.

12 I have no further questions.

13 JUDGE DOLAN: Thank you.

14 JUDGE SAINSOT: Mr. Kelter?

15 CROSS-EXAMINATION

16 BY

17 MR. KELTER:

18 Q Good morning, Dr. McDermott.

19 A Good morning.

20 Q I have a couple of questions about your
21 Ameren distinguished professorship.

22 Does Ameren fund your position at the

1 University of Illinois?

2 A No.

3 Q Okay. And have you had any discussions
4 with people from Ameren about your professorship
5 under this title?

6 A Just -- well, when they set up the fund
7 with the University, they provided the cash to the
8 Foundation. And the Foundation then essentially
9 grants me a set of finances that I can use to hire
10 graduate assistants, pay for travel to conferences,
11 things of that nature. And that's what it's used
12 for. And the Company has no input into what I teach
13 or anything like that. I have to live under the
14 University's rules and follow their protocols.

15 Q So you didn't have any discussions with
16 Ameren before you were hired to this position about
17 this position?

18 A Before I was hired? No, they -- they
19 didn't even have someone on the hiring committee, as
20 I recall.

21 Q Mr. McDermott, could you turn to Page 6 of
22 your direct testimony.

1 At Line 23, you discuss the recent
2 Illinois Appellate Court ruling in ComEd versus
3 Illinois Commerce Commission; is that correct?

4 JUDGE DOLAN: You mean Line 123?

5 MR. KELTER: Yeah.

6 THE WITNESS: 123. Okay.

7 BY MR. KELTER:

8 Q I'm sorry. What did I say?

9 A You said "23."

10 Q Line 123.

11 A Yes.

12 Q Are you an attorney?

13 A No, sir.

14 MR. KELTER: Your Honors, at this time I would
15 move to strike the portions of Mr. McDermott's
16 testimony that -- where he discusses legal cases, and
17 I can go through the specific sections.

18 JUDGE SAINSOT: For the record, Mr. Kelter, we
19 will definitely take your -- the sentiment of your
20 objection into consideration, but the time to object
21 is when the --

22 JUDGE DOLAN: Testimony.

1 JUDGE SAINSOT: -- testimony was offered into
2 the record. It's been admitted now.

3 MR. MOORE: Again, I would add we also had a
4 time period to file motions regarding testimony.

5 JUDGE SAINSOT: Right. That was what Friday's
6 hearing was about, at least as the very end date for
7 that sort of thing.

8 So your motion is denied.

9 BY MR. KELTER:

10 Q Mr. McDermott, and -- or -- Dr. McDermott,
11 in preparation of this testimony, did you review the
12 case Central Illinois Light Company versus ICC,
13 255 Ill.App.3d 876?

14 A I can't recall the exact docket number that
15 you're using.

16 Which case was that?

17 Q It's the Soco (phonetic) case where this
18 issue was discussed.

19 A Oh, yes.

20 Q And you reviewed -- did you review
21 A. Finkl & Sons v. ICC, 250 Ill.App.3d 317?

22 A I have seen that on numerous occasions.

1 Q Did you review it in preparation of this
2 testimony?

3 A I looked at it again, but I didn't -- yeah.

4 MR. KELTER: That's all the questions I have.

5 JUDGE SAINSOT: Thank you, Mr. Kelter.

6 CROSS-EXAMINATION

7 BY

8 MR. COFFMAN:

9 Q Good morning, Professor McDermott.

10 A Good morning.

11 Q My name is John Coffman. I'm here today
12 representing AARP.

13 A Good morning.

14 Q And you understand that AARP has a
15 different perspective on the issue of decoupling than
16 you do?

17 A I'm sure we're going to find that out.

18 Q Okay. Would you agree with me, Professor
19 McDermott, that the goal of utility regulation is to
20 fairly balance the interest of consumers and utility
21 shareholders?

22 A That is correct.

1 Q And would you agree with me that NRDC's
2 decoupling proposal would transfer business risk from
3 utility share- -- from ComEd to consumers?

4 A No, I would not.

5 Q Do you -- would you agree with me that
6 variation in sales and usage is a business risk for
7 an electric distribution company?

8 A It's a risk, but it --

9 Q It's a business risk, isn't it?

10 A Well, we're regulating the utility, again,
11 to balance the interests. So it's something that
12 affects both the customer and the Company.

13 Q And when you state in your testimony that
14 the goal of decoupling is to reduce the disincentive
15 to promote energy efficiency, aren't you talking
16 about the risk that the utility suffers from a
17 reduction in sales in between rate cases?

18 A Well, that would assume that the existing
19 rate design is the only appropriate rate design.

20 Q Could you answer my question?

21 A Could you say it again for me, please.

22 Q Would the decoupling proposal offered by

1 NRDC in this case reduce the business risk that ComEd
2 now bears as to variations in sales and usage?

3 A It results in -- not a transfer of that
4 risk; but, I mean...

5 Q I mean, as an economics professor, you
6 don't believe that risk simply disappears, do you?

7 I mean, it has to go somewhere?

8 A Well, that's correct. And as a total,
9 this -- the organization that we have here is a
10 utility serving the customers of its jurisdiction.
11 And if -- they face jointly this risk of fluctuating
12 sales. And the rate design as it is today puts a
13 large fixed cost margin on those sales. And as a
14 result of that, if we sell less, the Company bears
15 this cost.

16 Now, you know, that assumes that this
17 design of the pricing is correct from the beginning
18 and that somehow decoupling is shifting risk. I
19 don't believe it shifts risks. It's dealing with the
20 cost that we have to deal with, which are stated in
21 the revenue requirement by the Commission.

22 Q Is it not your goal in supporting

1 decoupling to mitigate or to reduce that risk so that
2 the utility is less concerned with energy efficiency?

3 A The goal is to achieve the revenue
4 requirement that the Commission has set and give the
5 Company a fair opportunity to meet that revenue
6 requirement. That's why the decoupling mechanism
7 trues-up to the approved revenue requirement.

8 Q Would you agree with me that the risk of
9 variations in sales and usage has to be borne by
10 someone, either the utility shareholders or the
11 consumers, to some degree?

12 A Or jointly, yes.

13 Q And would you not agree with me that
14 decoupling generally tends to change the manner in
15 which that is shared between ratepayers and
16 shareholders?

17 A But the point of the regulatory process is
18 to create an opportunity to recover the revenues that
19 the Commission found just and reasonable. And
20 whether it's a traditional rate design process or the
21 decoupling, that's what's the goal. And you're not
22 somehow creating more costs or more risks by allowing

1 the Company to earn its revenue requirement.

2 Q I mean, you would agree with me, wouldn't
3 you, that the risk is what the risk is, it doesn't --
4 the risk is not increased or decreased by changes in
5 rate design; is that not correct?

6 A I think that's what I just said, that the
7 rate design --

8 Q And you would have to agree with me,
9 wouldn't you, that decoupling changes how that risk
10 is borne between shareholders and consumers?

11 A Again, see, I thought I just agreed with
12 you that the rate design isn't what matters. It's
13 the total revenue requirement that matters.

14 Q All right. I'll move on.

15 Well, on -- on a similar issue,
16 though, on Page 14 of your testimony, you make the
17 statement that, quote, Finally, decoupling does not
18 represent a long-term risk to consumers -- and then
19 the sentence goes on.

20 If decoupling does not present a
21 long-term risk, does it not at least create a
22 short-term risk for consumers?

1 A No. I mean, the point of that sentence was
2 to say it's not a short-run and it's not a long-run
3 risk for the customers. What it's going to give the
4 customers a capability of is remove the disincentive
5 from the Company to promote energy conservation and
6 energy efficiency and the customer can end up
7 benefiting from that by having lower bills.

8 Q And when you say "decoupling" in your
9 testimony, am I to understand that you're not
10 supporting any particular type of decoupling?

11 A That's correct.

12 Q Okay. So you're not here today to
13 specifically support the type of decoupling that
14 Mr. --

15 A Cavanagh.

16 Q -- Cavanagh is supporting; is that true?

17 A Correct.

18 Q And this is obviously a topic that you have
19 studied and researched to some degree?

20 A Yes.

21 Q So you are familiar with, I assume,
22 variations on the decoupling concept?

1 A Correct.

2 Q If you were to generally classify the
3 various permutations of what we loosely call
4 decoupling, about how many different types would you
5 break it down into?

6 A There are three or four.

7 Q Okay. And do you believe that amongst
8 those three or four different types of decoupling,
9 that some are preferred or operate better than other
10 forms of decoupling?

11 A Again, the point of my testimony was to set
12 up the issue that decoupling is preferred to the
13 straight fixed/variable for the purposes of
14 encouraging conservation.

15 Q Have you ever in your research and study
16 attempted to rank the different types of decoupling
17 from -- the type of decoupling that you believe
18 operates the best to that type of decoupling that
19 operates less effectively?

20 A No, sir.

21 Q So you don't really have an opinion about
22 whether one type is better than another?

1 A Again, that's all factual in particular
2 cases and things of that nature. My point in this
3 particular testimony was decoupling as a concept
4 versus straight fixed/variable and which one, you
5 know, helps achieve conservation and --

6 Q Have you --

7 A -- energy efficiency.

8 Q Have you ever testified that -- regarding
9 per customer decoupling specifically in any
10 jurisdiction or in any publication?

11 A Again, the only time I have testified about
12 this type of issue was in Indiana where, again, my
13 testimony was to set up the general principles of
14 which one has a disincentive and...

15 Q Would you agree with me that the
16 benefits -- that there are benefits to regulatory
17 lag?

18 A In which situation?

19 JUDGE SAINSOT: And benefits to whom?

20 BY MR. COFFMAN:

21 Q Would you agree that regulatory lag
22 provides some incentive for a regulated utility to

1 operate in a cost-efficient manner?

2 A Again, it depends upon the entire structure
3 of the proposal that you have. Under some
4 structures, regulatory lag could be onerous; and
5 under other structures, regulatory lag could be
6 beneficial.

7 Q So it can -- can regulatory lag under the
8 regulatory scheme used here in Illinois be an
9 incentive for cost-effective operations of utility?

10 A Again, it depends on all of the
11 particulars. We don't regulate each of these
12 companies quite the same way.

13 Q Would you agree with me that it can in --

14 A In a properly designed regulatory program,
15 regulatory lag can serve that kind of purpose.

16 Q I know you answered several questions about
17 your Exhibits 1.2 and 1.3. And I apologize if you
18 already answered this, but when were those documents
19 developed?

20 A This summer when they put the testimony
21 together.

22 Q And were they developed by you or by

1 someone who was directing --

2 A By me and taking them from the documents
3 that we've recorded here, which are the Edison
4 Foundation Report in July of 2010 and from the
5 American Gas Association and from those standard
6 types of publications, once again, to try to just
7 provide a set of facts about what's happening in the
8 country at this time.

9 Q And the Edison Institute and the American
10 Gas Association are utility trade associations,
11 correct?

12 A That's correct.

13 Q Did you attempt to review any NRRI
14 publications or --

15 A I don't believe the NRRI had a publications
16 listing all of the states in trying to achieve that.

17 Q With regard to the comments in your
18 testimony on Page 6 regarding the recent Appellate
19 Court Second District decision, did you write that
20 section or did someone prepare that for you?

21 A Page 6?

22 Q Yes.

1 A I had a hand in writing this, yes.

2 Q Who assisted you in discussing the legal
3 cases here?

4 A Well, I'm -- I wasn't -- you have to
5 understand, the point of what I'm presenting here
6 are one of the facts associated with the particular
7 types of decoupling mechanisms that are employed out
8 there. Decoupling trues-up to a given revenue
9 requirement that the Commission has set. So the
10 revenue requirement is not something that's affected
11 by the --

12 JUDGE SAINSOT: Mr. McDermott, just answer the
13 question.

14 The question was, who assisted you.

15 THE WITNESS: Carl Peterson.

16 BY MR. COFFMAN:

17 Q Okay. And who is Carl Peterson?

18 A He's an associate of mine at NERA and the
19 University.

20 Q Is he an attorney?

21 A No.

22 Q Okay. Even though you're not testifying

1 specifically as to per customer decoupling, you do
2 understand the mechanics of the proposal being
3 offered by NRDC in this case, correct?

4 A Yes, I do.

5 Q Okay. And does this proposal -- this NRDC
6 proposal contain any component that actually creates
7 an enforceable commitment to require ComEd to
8 increase cost -- or energy efficiency programs?

9 A No, it's just removing the disincentive.

10 Q Would you agree that it would be beneficial
11 to, perhaps, couple this proposal with some mandates
12 that ensured actual energy efficiency programs?

13 A I would hope that if the Commission is
14 making this kind of decision to adopt decoupling,
15 that it would consider those kind of policies as
16 well.

17 Q Do you think that would be essential to a
18 decoupling proposal?

19 A I think a decoupling proposal is the first
20 step and that the -- those other issues will follow.

21 Q What -- what assures you that actual
22 cost-efficien- -- energy efficiency programs will

1 follow?

2 A Well, I think if the Commission is
3 signaling that it wants to remove the disincentive
4 and encourage the Company to do so, that you would
5 expect it to ask how it's proceeding in those areas.

6 Q If this NRDC proposal is adopted, you'd
7 agree with me that it's possible the consumers will
8 be high- -- paying higher rates in between rate cases
9 than they otherwise would be paying?

10 Just a basic question.

11 A No.

12 Q So is it possible that consumers will be
13 paying higher prices in between rate cases than they
14 otherwise would without the --

15 A I think the effect of the mechanism is
16 minute and that the ultimate effect on the customer's
17 bills is what's going to be important because if the
18 customers do engage in more energy efficiency, they
19 can lower their bills.

20 Q Well, if a customer who engages in a, say,
21 aggressive energy conservation, would they not have
22 higher rates than otherwise?

1 Even if their rates are lower because
2 of their conservation, does not decoupling, even if
3 minutely, increase their rates?

4 A Again, that's what we're saying. The
5 ultimate effect of the program is not to raise rates
6 in an appreciable fashion.

7 Q But would you agree with me that it's
8 possible that a customer who aggressively engages in
9 energy conservation might yet have their savings
10 lessened as a result of decoupling?

11 A That's -- I don't believe that will be a
12 significant case, no.

13 Q Possible?

14 A There's always the possibility.

15 Q And decoupling would be, under the NRDC
16 proposal, applied across residential rates --

17 A Residential --

18 Q -- generally?

19 A -- customers.

20 Q Including low-income customers?

21 A Yes.

22 Q And is there any program or provision that

1 you're aware of that would ensure that customers of
2 low-income or modest means would have the ability to
3 afford energy efficiency investments?

4 A I think that the whole point of breaking
5 down the disincentive means that the Company has the
6 ability to do all sorts of programs, like online bill
7 financing, to help those types of customers and that
8 we would expect to see those kind of innovations
9 start to happen because the disincentive has been
10 removed.

11 Q And does the disincentive that you would
12 like to see removed increase any incentive to assist
13 low-income customers in energy efficiency
14 investments?

15 A There's no specific link there.

16 Q Okay.

17 MR. COFFMAN: That's all that I have.

18 Thank you very much.

19 JUDGE SAINSOT: Thank you, Mr. Coffman.

20 JUDGE DOLAN: ComEd's the only other...

21 MR. RIPPPIE: Just -- it will be less than my 5
22 minutes.

1 EXAMINATION

2 BY

3 MR. RIPPIE:

4 Q In fact, I believe my only questions,
5 Dr. McDermott, will be follow-up questions.

6 We've known each other for a long
7 time; but, nonetheless, I'll introduce myself. I'm
8 Glenn Rippie and I'm here representing Commonwealth
9 Edison.

10 You testified both in your prefiled
11 testimony and on cross-examination about balancing
12 interests.

13 Does balancing interests of
14 shareholders and consumers imply that the utility
15 should not have an opportunity to recover in full its
16 revenue requirement?

17 A No, it should have an opportunity.

18 Q So would an appropriate balance include
19 rates that offer the utility the opportunity to
20 recover in full its just and reasonable costs?

21 A As a matter of rate design, there are a
22 number of ways that can happen, the decoupling

1 approach would actually encourage conservation.

2 Q Would it be a fair balance if regulatory
3 lag that you were asked about prevented a utility
4 from having a reasonable opportunity to recover its
5 cost?

6 A Again, that depends upon the situation; but
7 under the way rates are designed today with the large
8 fixed cost component on a volumetric basis,
9 regulatory lag can create that disincentive that
10 we're talking about. And so we're proposing that a
11 decoupling mechanism would remove that.

12 Q At a more general level, though, regardless
13 of whether that is caused by a large fixed cost
14 component or otherwise, would it be a fair balance of
15 utility and shareholder -- customer and shareholder
16 interest if regulatory lag prevented the utility from
17 having a reasonable opportunity to recover its costs?

18 A Well, if the situation is that the lag is
19 preventing something from happening, then that's
20 something we would want to address in our design of
21 the regulatory process.

22 Q Now, you also were questioned in

1 cross-examination about risk, and it's a topic that
2 you discuss in your prefiled testimony as well.

3 And I'm not sure if I heard the
4 question and answer correctly, but you were asked a
5 question about risk disappearing.

6 Dr. McDermott, would you agree that
7 depending upon how a market is structured, risk can
8 actually be made to lessen for everyone?

9 A Yes.

10 Q And a good example of that would be a
11 mutual insurance company that minimizes the risk to
12 any individual insured by pooling their risks?

13 A If we move from a situation where everybody
14 is self-ensuring the pools and things of that nature,
15 then, yeah, your risk would probably fall.

16 Q That's not the only case, that's just an
17 example?

18 A Exactly. Yes.

19 Q And you'd have to look at the particular
20 dynamics of the market and how the business risks are
21 affected in order to make that assessment in any
22 particular case?

1 A That's correct.

2 MR. RIPPIE: That's all I have. Thank you.

3 JUDGE DOLAN: Thank you.

4 THE COURT: Redirect?

5 MR. MOORE: May I have a few minutes?

6 (Whereupon, a discussion was had

7 off the record.)

8 MR. MOORE: We have no redirect.

9 JUDGE DOLAN: Okay. Thank you, Mr. Moore.

10 (Witness sworn.)

11 RALPH CAVANAGH,

12 called as a witness herein, having been first duly

13 sworn, was examined and testified as follows:

14 EXAMINATION

15 BY

16 MR. MOORE:

17 Q Could you please state your name.

18 A My name is Ralph Cavanagh, C-a-v-a-n-a-g-h.

19 Q And by whom are you employed?

20 A The Natural Resource Defense Council.

21 Q And you're testifying today on behalf of

22 NRDC?

1 A Yes.

2 Q I show you what has been marked for
3 identification as NRDC Exhibit 2.0, consisting of 24
4 pages of question and answer and a single exhibit
5 identified as Exhibit 2.1.

6 Did you prepare this testimony?

7 A Yes.

8 Q And if asked these questions today, would
9 you give the same answers?

10 A Yes.

11 Q Now, I show you what has been marked for
12 identification as NRDC Exhibit 3.0, the Rebuttal
13 Testimony of Ralph Cavanagh -- Cavanagh. I'm sorry.
14 And this consists of eight pages of question and
15 answer.

16 If asked the same questions today,
17 would you give the same answers?

18 A Yes.

19 MR. MOORE: At this time, I move into evidence
20 NRDC Exhibits 2.0 and 3.0.

21 JUDGE SAINOT: Any objection -- oh, sorry.

22 Any objection.

1 MR. RIPPIE: None.

2 JUDGE SAINSOT: Okay. Hearing none, your

3 motion is granted and NRDC Exhibits 2.0 and 3.0 --

4 are there any attachments?

5 MR. MOORE: Yes, there was a 2.1.

6 JUDGE SAINSOT: -- and 2.1, which is attached

7 to 2.0 are all entered into evidence.

8 (Whereupon, NRDC

9 Exhibit Nos. 2.0 and 3.0 were

10 admitted into evidence as

11 of this date.)

12 CROSS-EXAMINATION

13 BY

14 MS. LUSSON:

15 Q Good morning, Mr. Cavanagh.

16 A Good morning.

17 Q I think we were introduced earlier. My

18 name is Karen Lusson from the Attorney General's

19 Office?

20 A Yes.

21 Q I want to start out with a few questions

22 about your background.

1 On Page 1 of your testimony, you note
2 that you're the energy program codirector for NRDC;
3 is that correct?

4 A Yes.

5 Q Now, you note that NRDC is a nonprofit
6 environmental advocacy organization; is that correct?

7 A Yes.

8 Q And as the energy program codirector, is it
9 correct that, at least in part, you are in charge of
10 directing many of NRDC's energy efficiency and
11 renewable energy advocacy efforts?

12 A Yes.

13 Q Can you explain to me who funds the energy
14 program at NRDC? That is, again, I'm not seeking a
15 specific list of donors, but I want to get a feel for
16 the major supporters of your energy advocacy efforts.

17 A The major supporters are nonprofit
18 foundations and individual philanthropists. NRDC
19 accepts no contributions from any company involved in
20 the energy business.

21 Q Okay. And does the energy program receive
22 any grants or do grants serve as a source of

1 financial support that you get in any given year?

2 A Certainly.

3 Q And when you submit a grant request or a
4 proposal for a grant funding, do you highlight your
5 state advocacy work, like the participation in
6 proceedings such as this?

7 A Yes.

8 Q Has NRDC received any grant funding to
9 promote revenue decoupling?

10 A NRDC has received grant funding to promote
11 changes in utilities' business models to encourage
12 more energy efficiency and renewable energy
13 investment. I wouldn't say specifically for revenue
14 decoupling.

15 There is a full package of reforms
16 involving both changing the business model and
17 assuring enhanced cost-effective energy efficiency in
18 renewable energy. We view it as an integrated
19 package and so do our funders.

20 Q And when you apply for those grants, do you
21 list and discuss the kinds of reforms to the industry
22 that you believe are necessary --

1 A Yes.

2 Q -- to promote energy efficiency efforts?

3 Do you reference revenue decoupling?

4 A Yes.

5 Q And does part of your advocacy work and

6 that of the NRDC energy program include making NRDC

7 members, like the members in Illinois, aware of the

8 pending policy issues, for example, say a revenue

9 decoupling proceeding before a state regulatory body?

10 A We do issue regular reports on our

11 activities, and, yes, I would say that that is part

12 of what I have an obligation to do for my membership.

13 Q And does part of that advocacy work include

14 asking local or in-state NRDC members to write

15 letters or make phone calls to support -- in support

16 of NRD (sic) positions, such as regulatory

17 decoupling --

18 A We sometimes --

19 Q -- to policy --

20 A I'm sorry.

21 Q -- to policymakers or regulatory

22 commissions or the legislatures?

1 A Certainly, we sometimes encourage our
2 members to communicate with their elected officials
3 and regulators, yes.

4 Q And has the energy program made similar
5 appeals to local or in-state members on a revenue
6 decoupling issue in the past, perhaps in other states
7 that are considering revenue decoupling?

8 A I recall us doing so, again, not -- not
9 solely in the context of revenue decoupling, but as
10 part of a broader effort to achieve objectives, which
11 for us are most -- revenue decoupling's a means to an
12 end, not an end in itself.

13 And the end is lower costs, both
14 environmental and economic, to customers as a result
15 of more cost-effective energy efficiency.

16 We have -- we have encouraged our
17 members to reach out on those issues in the past,
18 yes.

19 Q And have you conducted any activities like
20 this for the current proceeding here in Illinois?

21 A I'm not aware of any.

22 But I hasten to add NRDC has a Chicago

1 office, and it is certainly conceivable that my
2 colleagues in Chicago have reached out to their local
3 members. I would deem it entirely appropriate for
4 them to do that.

5 Q Okay. Now, in terms of your testimony here
6 today before the ICC, your test- -- would you agree
7 that you are testifying -- or correct me if I'm wrong
8 -- as an energy and revenue decoupling advocate?

9 A And expert, yes.

10 Q And in terms of your background and
11 experience, do you consider yourself an expert in
12 utility costing principles and cost estimation?

13 A Yes.

14 Q Have you ever reviewed, prepared or
15 conducted an independent cost of service analysis for
16 an electric utility in a regulatory proceeding?

17 A I have done so in the context of a specific
18 issue, of linkages between revenue decoupling and
19 return on equity; and I have, for example, testified
20 on that issue in Montana and in Maryland, in addition
21 to my testimony in this proceeding.

22 Q And did that case involve a specific cost

1 of service analysis to determine the actual fixed
2 costs of a utility?

3 A Yes.

4 Q And that -- and did you also make
5 recommendations about a, for example, specific
6 authorized profit level that would be appropriate?

7 A My recommendations in those proceedings, as
8 in this one, went to the specific issue of whether
9 adoption of a decoupling mechanism should be linked
10 to a targeted reduction in return on equity.

11 And in all cases, I have recommended
12 against doing that, but that is the limit of my
13 testimony in all of those proceedings.

14 Q Okay. So you never provided testimony
15 saying this is what a utility's cost of service is?

16 A No.

17 Q And do you consider yourself an expert on
18 what is an appropriate profit level for an attorney
19 (sic) that is analyzing the cost of capital for a
20 utility for purposes of making a specific return on
21 equity recommendation?

22 (Discussion off the record.)

1 THE WITNESS: I was nonplussed.

2 BY MS. LUSSON:

3 Q Some kind of Freudian slip there. I'm not

4 sure...

5 A For a utility.

6 I consider myself -- let me answer

7 carefully and narrowly. I consider myself an expert

8 on the specific question of whether adoption of a

9 revenue decoupling mechanism should be accompanied by

10 a targeted reduction in return on equity.

11 Q Okay. But my question went to as (sic) to

12 whether or not you consider yourself an expert on

13 what is the appropriate cost of capital for a utility

14 for purposes of setting rates in a rate case

15 proceeding?

16 A No, I will again stick with my previous

17 answer. I think I have expertise in some aspects of

18 it, but not -- on the broad question of what's the

19 right return on equity for a given utility, taking

20 everything into account, I've never testified on

21 that.

22 Q Okay. Have you reviewed any of the

1 Company's tariffs in this proceeding?

2 A I have reviewed the Company's
3 straight/fixed/variable rate design proposal, which
4 we oppose for reasons set out in my testimony, and I
5 have also reviewed the Company's sample tariff to
6 implement revenue decoupling and support it, but
7 that's the limit of the review that I've conducted.

8 Q Okay. So do you know anything else about
9 the existing residential rate that's in place for
10 ComEd today in terms of what the customer charge is,
11 whether they're variable rates, whether they're
12 inclining block, declining block?

13 A I'll tell you my understanding, which is
14 that the customer charge is on the order of \$8.00 a
15 month for the average residential customer and that
16 the rate structure is flat, not tiered.

17 Q And do you know if the Company has any
18 seasonal differentials in its current residential
19 rate design?

20 A I don't.

21 Q Do you know if the Company has any
22 interruptible rates?

1 A I don't know.

2 Q Turning to Line 32 of your testimony.

3 A Yes.

4 Q You reference your previous testimonies.

5 And you've testified, in fact -- and I think you've

6 indicated in our conversation this morning that you

7 testified on multiple occasions on -- in support of

8 revenue decoupling --

9 A Yes.

10 Q -- in various states; is that right?

11 A Yes.

12 Q And is it -- would it be correct to say

13 that your testimony is policy testimony rather than

14 sponsorship of the specific details of decoupling

15 calculations, tariffs, review procedures and rate

16 adjustments?

17 A I wouldn't make the distinction that

18 starkly.

19 Certainly, I have testified on details

20 of mechanisms.

21 Q In this case, however, you did not propose

22 a decoupling tariff; is that correct?

1 A I didn't propose a tariff, but I proposed a
2 number of very specific details for how the mechanism
3 should be designed, including a rate cap, annual
4 adjustments, averaging across the residential sector.

5 I think all of the crucial details in
6 terms of design are in my testimony and ComEd has
7 supplied a sample tariff for implementing them beyond
8 that.

9 Q And -- after filing your testimony, did you
10 have any conversations with ComEd about the
11 development of a sample decoupling tariff?

12 A No.

13 Q Did you have any advanced knowledge that
14 ComEd intended to file an illustrative decoupling
15 tariff with its rebuttal testimony prior to the date
16 that that testimony was filed?

17 A I did not.

18 Q Did anyone at NRDC in Illinois?

19 A I don't know.

20 Q Looking at Line 53 of your testimony, you
21 reference the possibility of delivering windfall
22 gains to utilities.

1 Do you see that there?

2 A Yes.

3 Q And those windfall gains, as I understand
4 your testimony, would occur under the current
5 regulatory framework whenever weather conditions are
6 severe and local economies begin to recover from the
7 nation's severe economic downturn --

8 A Yes.

9 Q -- is that right?

10 I want to focus on the economic
11 recovery part of that discussion.

12 In the context of traditional
13 regulation and without decoupling, economic recovery
14 would tend to cause ComEd sales to increase between
15 test years; would you agree?

16 A Yes.

17 Q And is that the windfall that you're
18 speaking of when you reference a windfall there?

19 A Yes. Historically, electric utilities have
20 seen their sales grow much more rapidly than their
21 customer count. And as a consequence, not just
22 during periods of economic recovery, but most of the

1 time, a linkage between financial health and
2 electricity sales has served the electric utility
3 industry very well. We're proposing a significant
4 change.

5 Q And is it your belief that under
6 decoupling, such windfall gains would be passed
7 through to customers?

8 A Under decoupling, the utility would receive
9 its authorized fixed cost revenue requirement, no
10 more and no less. And in that sense, yes, their
11 benefit to customers is that recoveries in excess of
12 the authorized amount are returned to customers and
13 increased sales associated with extreme weather are
14 returned to customers.

15 Q Now, as I understand your decoupling
16 proposal, it would only apply to the residential
17 class; that's right?

18 A That's right.

19 Q So when the economy recovers, any growth in
20 small commercial or large commerce or industrial
21 sales would produce a revenue gain for ComEd,
22 wouldn't it --

1 A The difference --

2 Q -- because decoupling would not apply to
3 those classes?

4 A I don't agree with that statement because
5 when we looked at the actual numbers, it was clear
6 that almost all of the volumetric recovery of fixed
7 costs for ComEd is occurring in the residential
8 classes.

9 That is where the overwhelming
10 majority of the fixed cost revenues that are tied to
11 volumetric sales are to be found, and that's why we
12 targeted the residential class for the mechanism.

13 Q And to the extent, however, that the
14 decoupling mechanism that you're proposing does not
15 apply to other classes -- that's right, isn't it?

16 A It does, but there are very few volumetric
17 recoveries of fixed costs in those other classes.

18 Q To the extent that there are gains in the
19 commercial and industrial load --

20 A Right.

21 Q -- those -- those gains would be retained
22 by the Company between rate cases under your

1 proposal; is that right?

2 A Again, in those classes, revenues
3 overwhelmingly are coming from demand charges and
4 fixed charges. They're not coming from volumetric
5 sales, that is, the fixed cost recoveries.

6 Fixed cost recovery for volumetric
7 sales is almost exclusively for ComEd occurring in
8 the residential class.

9 Q And --

10 A And that's the point that -- that's in our
11 testimony.

12 Q Okay. And to the extent that there are new
13 customers gained between --

14 A Right.

15 Q -- rate cases, is it -- isn't it correct
16 that under your proposed form of revenue decoupling,
17 those revenues gained from the new customers would be
18 retained by the Company?

19 A I think this is a misunderstanding and
20 that's turned up in several of the rebuttals.

21 Our proposal is simply that not all of
22 the revenues would be retained. There would be a

1 revenue requirement per customer that the Company
2 would adopt -- or that the Commission would adopt;
3 and, yes, the Company would keep those revenues, but
4 not all of the revenues from the new customers, only
5 the revenue-per-customer limit adopted by the
6 Commission.

7 Q So the additional customers gained post
8 issuance of a decoupling mechanism in this docket
9 would be retained by the Company to the extent that
10 they are not a part of the revenue decoupling tariff
11 calculation?

12 A All customers, new and existing, are part
13 of the calculation.

14 Basically, what's happening is that
15 between rate cases every year, there's a true-up,
16 which all the Commission needs to know are sales and
17 the customer count.

18 As customers are added, the --
19 obviously, the revenues per customer that the Company
20 can keep total increase because there are more
21 customers; but the Company isn't keeping, quote, all
22 of the revenue from the new customers. It's keeping

1 the same revenue per customer limit established by
2 the Commission that applies to all other customers.

3 Q And what would happen with the additional
4 revenues from those new customers?

5 A If the new customers -- this is true for
6 both new and existing customers: If the Company,
7 because of increased sales, is recovering more than
8 its authorized fixed cost revenue requirement per
9 customer, it has to give all of the excess back with
10 every true-up.

11 Q And so it's your testimony that your
12 decoupling proposal would incorporate in that
13 calculation all new customers and a review of the
14 revenue per customer from new customers in that
15 calculation?

16 A Again, all -- what it would do -- and this
17 is the garden-variety, typical revenue per-customer
18 decoupling mechanism that is the dominant form of
19 decoupling across the United States. There's nothing
20 exotic here. This is also the same as the
21 Peoples Gas mechanism.

22 What you do is you count the customers

1 every year. You count the electricity sales. So you
2 know whether total fixed cost recovery was above or
3 below the authorized level and you true-up. New
4 customers are treated exactly like existing customers
5 for this purpose.

6 Q Speaking of the Peoples Gas recovery
7 mechanism, I believe you referenced Peoples Gas in
8 your testimony; is that correct?

9 A I referenced the fact that the Commission
10 had adopted a decoupling pilot for Peoples Gas which
11 had resulted in -- in reductions in rates for
12 customers, yes.

13 Q Okay. We'll -- I'll put off those
14 questions in (sic) a moment.

15 Let me have -- direct you to Line 305
16 of your testimony.

17 A Okay.

18 JUDGE SAINSOT: And what page is that on?

19 THE WITNESS: 15.

20 JUDGE SAINSOT: Okay. Thank you.

21 BY MS. LUSSON:

22 Q So is it -- then you are -- you would not

1 agree that when and if ComEd adds newly connected
2 residential customers, the revenues from such new
3 customers would be retained by ComEd and not flow
4 back through the decoupling mechanisms. You disagree
5 with that statement?

6 A I -- let me explain how -- again, new and
7 existing customers aren't treated any differently.
8 There's an authorized per customer revenue
9 requirement that applies to both new and existing
10 customers, and that's what the Commission looks at
11 every year. It counts the customers, new and
12 existing; looks at total fixed cost recovery; and
13 determines whether the per customer recovery was
14 above or below the authorized level.

15 There is no difference between the way
16 new and existing customers are treated for purposes
17 of this mechanism, and I think that's been the
18 uniform practice for per-customer decoupling across
19 the country.

20 Q So is it your understanding that the
21 Peoples Gas tariff does not exclude new customers
22 from the reconciliation calculation when it's

1 examining per-customer revenues and determining
2 whether or not a surcharge or credit should be
3 applied to both?

4 A I'm not aware that it excludes new
5 customers, no.

6 MS. LUSSON: Okay. Let me show you what I'll
7 mark as AG Cross Exhibit 13.

8 (Whereupon, AG Cross
9 Exhibit No. 13 was
10 marked for identification
11 as of this date.)

12 JUDGE SAINSOT: What AG cross exhibit is this,
13 Ms. Lusson?

14 MS. LUSSON: 13.

15 JUDGE SAINSOT: 13?

16 BY MS. LUSSON:

17 Q If you could turn to -- first of all, let
18 me have you turn to your direct testimony at Page 16.
19 I think that's where you reference the Peoples Gas
20 decoupling --

21 A Right.

22 Q -- tariff.

1 And there, you indicate -- the
2 question at Line 314 reads, What does Illinois'
3 experience with revenue decoupling suggest about
4 potential costs to residential customers?

5 A Yes.

6 Q Do you see that question?

7 A Yes.

8 Q And then in your response, you state that
9 the decoupling program resulted in 10.8 million in
10 refunds and 2.07 million in refunds.

11 A Yes.

12 Q Now, looking at AG Cross Exhibit 13 -- was
13 it 13 -- I'm showing you what are tariff pages that
14 you referenced in your testimony as the source for
15 those figures that you included at Lines 317 through
16 321.

17 A Right.

18 Q And I'll -- can you take a look at those
19 and verify that, if these are, in fact, the pages
20 that you reference here for purposes of computing
21 those numbers?

22 A And I should note these numbers -- these

1 specific numbers were computed at my request and
2 under my direction by my colleague Dillon Sullivan.
3 So I did not look at this exhibit myself.

4 Q Okay.

5 A And I don't know whether this is what he
6 relied upon.

7 Q Then these are the pages, though,
8 referenced in your testimony at Page 16, are they
9 not?

10 A Candidly, I can't tell.

11 Q Would you accept, subject to check, that
12 these are the pages?

13 A Subject to check, I'm happy to accept it.

14 Q So these are the calculations from both
15 companies for the 2009 reconciliation for Peoples --
16 both Peoples Gas and North Shore Company, along with
17 the 2010 reconciliation for both of those companies;
18 would you agree?

19 A I see that the headings say Annual
20 Reconciliation Adjustment Effective 2009 and 2010.

21 Q Now, looking at those headings, you'll see
22 rate classifications: 1 sales, 2 transportation; 2

1 sales and 2 transportation, throughout those four
2 pages.

3 Do you see that?

4 A Yes.

5 Q And would you accept, subject to check,
6 that Rate Class 1 is residential customers and
7 Rate Class 2 is the general service customers which
8 is Peoples Gas' small business, multifamily,
9 commercial and industrial customers?

10 A I'll accept that subject to check. I have
11 no idea.

12 Q Now, would you agree that, in fact, those
13 totals that are indicated in your answer reflect both
14 residential and the Rate 2 classification customers,
15 which, again, are the multifamily, business and
16 commercial -- small commercial, industrial customers?

17 A The testimony is conveying the total impact
18 of the mechanism. That would be entirely reasonable,
19 yes.

20 Q What's -- the question, however, states,
21 What does Illinois' experience with revenue
22 decoupling suggest about potential costs to

1 residential customers?

2 Do you see that?

3 A Yes.

4 Q So, in fact, the 10.8 million and 2.07

5 figures there are not just residential customers; is

6 that right?

7 Those include credits to other

8 customer classes; would you agree?

9 A That appears to be the case, yes.

10 Q And looking at --

11 A Looks like the residential class dominates

12 the calculations, however.

13 Q And looking at the adjustment along Line 7,

14 Page 2 for the 2010 reconciliation, under Service

15 Classification No. 1, transportation, do you see the

16 figure \$39,479?

17 A I'm sorry. Which page are we on?

18 Q Page 2, Peoples Gas, Light and Coke

19 Company.

20 JUDGE SAINSON: On where -- on Line 7?

21 MS. LUSSON: Yes.

22 THE WITNESS: On Page 2 for the Peoples Light

1 and Gas Company (sic), Line 7, for transportation.

2 BY MS. LUSSON:

3 Q You see the positive number --

4 A Yes.

5 Q -- 39,000 -- so you would agree, wouldn't

6 you, that transportation that is trans- -- customers

7 who do not purchase their gas from Peoples Gas, in

8 fact, netted surcharges for the year, would you

9 agree, and not credits?

10 A Of \$39,000?

11 Q Yes.

12 A Yes.

13 Q And then looking at sales to the commercial

14 customers listed there again did not receive net

15 credits that year; would you agree?

16 A Commercial customers, \$326,000.

17 Q Isn't that --

18 A Obviously very trivial increases.

19 And I'm seeing for Item 1, which is

20 residential, the \$4 million refund.

21 Q And would you agree, though, that

22 for trans- -- the customers who do not -- residential

1 customers who do not purchase the gas from the
2 utility, decoupling did not benefit them that year in
3 terms of the rates that they paid?

4 A And -- the reason I would not agree with
5 that statement is that, of course, the full
6 evaluation mechanism requires also an assessment of
7 energy efficiency performance, which I suspect would
8 dwarf a \$39,000 positive item.

9 Q And did you do any kind of energy
10 efficiency analysis for Peoples Gas to determine
11 whether or not customers netted a benefit from energy
12 efficiency dollars spent versus what they paid into
13 the recovery mechanism?

14 A I haven't. I know that such an assessment
15 is underway. It's a pilot program.

16 Q And do you know how much Peoples Gas
17 invested in its energy efficiency program at the time
18 it received its decoupling proposal?

19 A I do not.

20 Q And do you know if, in fact, Peoples Gas
21 and North Shore Gas Company have increased their
22 energy efficiency spending as a result of having a

1 decoupling mechanism since --

2 A I've not followed their experience, no.

3 Q And Peoples Gas recently under the statute
4 is required to file an energy efficiency plan for
5 years 2011 through 2013. Are you aware of that?

6 A No.

7 Q And do you know if, in fact, Peoples Gas
8 and North Shore Gas Companies have proposed any
9 additional spending than what they're spending now on
10 energy efficiency programs as a part of that
11 statutorily required program?

12 A I don't know.

13 Q If you would look at the calculation again
14 on this -- this exhibit that I've handed you for the
15 -- how the reconciliation adjustment is calculated.
16 Now -- and I'll ask you to focus on Lines 1 through
17 5. And this gets --

18 A Which page?

19 Q Page 1.

20 A Okay.

21 Q It's actually on every one of the pages.

22 And this gets back to our discussion

1 about what is or isn't in a revenue per-customer
2 decoupling mechanism here in Illinois.

3 You would agree, would you (sic), that
4 Line 3 indicates an actual customer number?

5 Do you see that?

6 A Yes.

7 Q And then Line 4 indicates rate case
8 customers. Do you see that?

9 A Yes.

10 Q And would you agree that Line 5 is a
11 calculation that, in effect, removes the revenues
12 from customers that are -- any additional customers
13 over and above those that were the number listed as
14 rate case customers at the time of the -- this -- the
15 decoupling tariff was filed?

16 A If that's the case -- and I don't know it
17 to be the case. I'm looking at this for the first
18 time -- I'll repeat again that's not what we're
19 recommending in this proceeding.

20 Q Now, you stated earlier that you thought
21 the Peoples Gas tariff was similar to what you're
22 recommending in this case?

1 A It's a per-customer decoupling mechanism.

2 That's what I said. Yes.

3 Q And so you're unsure then -- do you know
4 for certain whether or not the Peoples Gas decoupling
5 tariff allows the Company to retain revenues gained
6 from new customers?

7 A I don't know for sure.

8 I hope it's clear again that our
9 proposal allows the Company to keep revenues from new
10 customers within the limit of the per-customer
11 revenue requirement.

12 New customers aren't excluded.
13 They're treated exactly the same as existing
14 customers. That's our proposal. We're not trying to
15 vintage customers.

16 Q For purposes of your conclusions in this
17 case, that is, that revenue -- per-customer revenue
18 decoupling is appropriate for ComEd, have you
19 presented any analysis of ComEd's revenue requirement
20 to isolate which costs are fixed costs and which are
21 variable with kilowatt-hour deliveries?

22 A Yes.

1 Q You've done that specific --

2 A In the testimony --

3 Q -- analysis?

4 A -- yes, and I've looked at the impact on

5 the Company's fixed cost recovery of reductions in

6 volumetric sales at a specific level.

7 Q Can you point to me in your testimony where

8 you discuss that specific analysis?

9 A Sure.

10 You'll find it starting at -- on Page

11 7, starting at Line 140, how substantial are

12 potential shareholder losses from kilowatt-hour

13 sales.

14 Q So it's your testimony then that you have

15 analyzed which costs that the Company incurs -- which

16 fixed costs the Company's incurred are actually

17 variable and which are --

18 A Ah.

19 Q -- are not variable?

20 A No, I have -- I have used numbers supplied

21 by the Company, as indicated here, and I've focused

22 on specifically distribution costs and their recovery

1 through volumetric and other means.

2 Q So you haven't done your own independent --

3 A No.

4 Q -- analysis?

5 Now, do you know if, in California,
6 the electric utilities there utilize what's called
7 their revenue balancing account to be sure what is
8 collected and retained by the utilities in that state
9 is exactly the dollars approved by the Commission as
10 opposed to revenue-per-customer decoupling?

11 A California uses what is called an attrition
12 approach, which is an alternative to per customer
13 revenue decoupling and a somewhat more complex
14 alternative.

15 California adjusts the revenue
16 requirement every year to reflect a number of
17 factors, including the customer count. We're
18 proposing a similar mech- -- a simpler mechanism for
19 Illinois. And the overwhelming jurisdiction --
20 number of jurisdictions nationally that have adopted
21 revenue decoupling have used a per-customer model.
22 California does not.

1 Q And do you know if -- and I'm asking -- I
2 understand you may have an opinion as to whether or
3 not this is important, but do you know if your
4 revenue-per-customer mechanism would adjust customer
5 rates based on efficiencies the Company gains through
6 new technologies?

7 A The only adjustments in a revenue
8 decoupling mechanism reflect divergences between
9 authorized fixed cost recovery and actual fixed cost
10 recovery.

11 That kind of additional adjustment
12 isn't contemplated by my proposal, and I'm not aware
13 that it's incorporated in any other mechanisms around
14 the country in a decoupling mechanism. It might well
15 make sense to do it independently of a decoupling
16 mechanism.

17 Q Would you agree that the per-customer
18 revenue decoupling proposal that you're recommending
19 makes no adjustment for, for example, reduced costs
20 of capital that may occur between rate cases for a
21 utility?

22 A It makes no adjustment for any changes in

1 utility costs that may occur between rate cases,
2 which by the way is, of course, also typically true
3 of conventional regulation.

4 Between rate cases, under the status
5 quo, the utility's revenues change with sales. We're
6 proposing to eliminate that and link the utility's
7 revenues instead to growth in the customer count.
8 But under either system of regulation, of course,
9 revenues change between rate cases.

10 Q At Line 488 of your testimony --

11 A Yes.

12 Q Now, you indicate that you believe
13 decoupling is urgently needed; is that right?

14 A Yes.

15 Q Have you attempted to calculate or forecast
16 any quantification of ratepayer impacts that would
17 have occurred historically under your approach as a
18 back-casting type of illustration of decoupling for
19 this --

20 A Yes, we --

21 Q -- for -- in this case?

22 A We've given a strong indication by looking

1 back at what actually happened from 1990 to the
2 present in terms of growth in electricity sales
3 versus growth in the customer count.

4 If you look at those numbers, which
5 are presented in my testimony, it's very clear that
6 revenue decoupling, on balance, would have refunded
7 money to customers compared to the status quo.

8 Q And can you point me specifically to that?

9 A Yes. You'll find that at Page 20. Let me
10 get you the line number.

11 And, yes, look at -- starting at
12 Line 403. This is typical of electric utilities
13 around the country.

14 Q Mr. Cavanagh --

15 A Yes.

16 Q -- can I stop you there?

17 A Sure.

18 Q I think I had a specific question and you
19 answered it.

20 A Very good.

21 Q Okay. So this is your analysis of what the
22 effects of your proposed per-customer revenue

1 decoupling would have --

2 A Would have been.

3 Q -- generated?

4 A Yes. Residential customers would have
5 benefitted significantly, is my conclusion at
6 Line 404.

7 Q And that's based on reports that the rate
8 of growth in residential kilowatt-hour use was more
9 than double that for the number of households in its
10 service territory?

11 A Yes. And if you eliminate the last two
12 anomalous years, it's actually a three-to-one spread.

13 Q So when ComEd's residential customer usage
14 was growing in those prior years, it's your testimony
15 that a revenue decoupling mechanism would have
16 benefited customers and would have re- --
17 would have produced refunds?

18 A Yes. Because, remember, you're coupling
19 revenues to growth in the customer count, not to
20 kilowatt-hour sales.

21 If the customer count is growing more
22 slowly than kilowatt-hour sales, customers are better

1 off in the sense of getting refunds.

2 The biggest way customers will be
3 better off, of course, is more energy efficiency
4 progress.

5 Q And to the extent -- is it your suggestion
6 that revenue per-customer growth for ComEd will -- is
7 declining?

8 A Well, if we meet the state's statutory
9 energy efficiency goals, it will decline. And we
10 want it to decline, but the historic trend is the
11 opposite.

12 Q And to the extent that revenue per customer
13 declines, would you agree then that residential
14 customers will incur surcharges associated with your
15 per-customer revenue decoupling mechanism? Yes or
16 no?

17 A Bills will go down. There will be a modest
18 increase in rates, assuming a sustained reduction in
19 per-customer electricity use.

20 I think the most important point to
21 make is that bills will be going down.

22 Q And bills that -- will be going down

1 because?

2 A Because consumption is going down.

3 Q And do you know if, in fact, bills would be
4 going down because of any additional energy
5 efficiency investments that ComEd has made as a
6 result of revenue decoupling?

7 A There is no question that if Illinois
8 statutory targets are met, ComEd will be contributing
9 very significantly to reductions in per-customer
10 electricity use.

11 Q And for preparation for your testimony in
12 this docket, did you review ComEd's most recent
13 energy efficiency filing in Docket 10-0570 in which
14 it presented to the Commission its plan for Years 4
15 through 6 of its energy efficiency requirements?

16 A I did not.

17 Q Okay. So would it surprise you to learn
18 that the Company has reported that it will have
19 difficulty meeting Year 5 statutory targets and
20 cannot make the Year 6 required statutory targets due
21 to the cost cap that's also included in this statute?

22 A It would not surprise me, but my hope would

1 be that, supplied with the right incentives, the
2 Company could find more savings than it now
3 anticipates.

4 Q Would -- and are you familiar with
5 Section 8-103 of the Public Utility Act?

6 A Yes.

7 Q And would you agree that that section of
8 the Act includes a cap on the amount of expenses
9 associated with energy efficiency programs that the
10 Company can charge to ratepayers?

11 A Yes. I believe it's two percent of
12 revenues.

13 Q Okay. And would you agree that if the
14 Company was incented to provide additional energy
15 efficiency programs, that those programs -- as a
16 result of some decoupling mechanism, that those costs
17 could not come from residential customers under the
18 cap?

19 A No, I don't agree, for this reason:

20 I think that given the right
21 incentives, the Company would find ways of getting
22 more savings for less expenditure. I think the

1 Company would be in a position to reach more broadly
2 than its own program budgets to deliver savings. I
3 think the Company could become a more effective
4 promoter of energy efficiency standards at both the
5 state and federal level.

6 There are a lot of ways the Company
7 can enhance efficiency performance outside the
8 program budgets within ComEd.

9 Q And is that -- is it because you feel that
10 they would do a better job of delivering what they're
11 delivering now?

12 A All of the above; that is, what I've tried
13 to lay out in my testimony are all of the ways that a
14 motivated electric utility can make a difference in
15 terms of total electricity consumption, and the
16 specific programs now out in the field, which we
17 support, are only a small part of it.

18 There are a whole host of ways that
19 the Company can interact with customers that don't
20 cost money in terms of just general relationships and
21 information. There is, again, the relationship with
22 the efficiency standards. There's the relationship

1 of the Illinois Power Agency where, historically,
2 ComEd has resisted extensive involvement in energy
3 efficiency in, for example, the bidding and
4 auctioning of (sic) programs of IPA.

5 And, finally, there are, on the whole
6 subject of state and federal standards, the
7 efficiency standards that lock in big savings across
8 whole categories of buildings and equipment, a host
9 of ways that cooperative utilities can make a
10 difference in getting more progress, and all of
11 that's outlined in my testimony.

12 Q And have you had specific conversations
13 with ComEd about ways they could improve their energy
14 efficiency programs?

15 A I've been discussing energy efficiency with
16 ComEd for a couple of decades, but I haven't
17 specifically addressed the details of the existing
18 programs. That's the responsibility of my colleagues
19 in Chicago who do a wonderful job.

20 Q And do you know if ComEd has committed in
21 this docket to invest in any more energy efficiency
22 programs, should it get a decoupling mechanism?

1 A I don't.

2 Q Would it surprise you to learn that they
3 did -- they have not made that commitment?

4 A We haven't asked them to. And if you'll
5 allow me to briefly respond to the implication, which
6 is, Well, why are we doing this if we don't have a --

7 Q Well, actually, I would mind.

8 A All right.

9 Q You could save that for redirect.

10 A Very good.

11 Q And you reference the Illinois Power
12 Authority and ComEd's unwillingness to allow the
13 Illinois Power Authority to engage in any energy
14 efficiency.

15 Are you aware that the Commission
16 recently ruled against the Illinois Power Authority
17 taking a role in the procurement of energy
18 efficiency?

19 A I'm not.

20 I bet it would make a difference if
21 ComEd changed its position, though.

22 Q Now, as part of your direct testimony, you

1 reference in Exhibit 2.1 an article published in
2 October 2009 in the Electricity Journal authored by
3 Pamela Lesh --

4 A Yes.

5 Q -- is that correct?

6 And you stated in your direct that you
7 actually reviewed the article; is that true?

8 A Yes.

9 Q And, in fact, Miss Lesh -- Lesh actually
10 thanks you in the preface or sidebar; is that
11 correct?

12 A She does.

13 Q And this article references various states
14 and their decoupling status; is that right?

15 A Yes, over the past decade.

16 Q And in your testimony, you state that, The
17 rate adjustments for these utilities reviewed in
18 Miss Lesh's article move both up and down and were
19 uniformly modest; is that correct?

20 A Yes, and I say how modest.

21 Q And is it your testimony that revenue
22 decoupling is a symmetrical mechanism?

1 A Yes.

2 MS. LUSSON: I want to show you what I'll mark
3 as AG Cross Exhibit 14.

4 (Whereupon, AG Cross
5 Exhibit No. 14 was
6 marked for identification
7 as of this date.)

8 BY MS. LUSSON:

9 Q Mr. Cavanagh, I've handed you an article
10 entitled Rate Impacts and Key Design Elements of Gas
11 and Electric Utility Decoupling: A Comprehensive
12 Review. And that article is written by Pamela Lesh
13 dated 6/30/2009.

14 Do you see that?

15 A I see that.

16 It was superseded by the October 2009
17 Electricity Journal article. This is an earlier
18 version.

19 Q Okay. So are you familiar with this report
20 generally?

21 Have you read it?

22 A Well, I remember this as, again, the draft

1 from which the final article came, yes.

2 Q Okay. So the final article was based on

3 this report?

4 A Yes.

5 Q If you would, please turn to Page 11.

6 A I'm on Page 11.

7 Q The table in the middle of the page is for

8 Pacific Gas and Electric.

9 You see that?

10 A Yes.

11 Q And would you agree that, in 2006, the

12 decoupling adjustment was \$24.64 million?

13 A One-quarter of one percent of the revenue

14 requirement; yes, I would --

15 MR. RIPPIE: Your Honors --

16 THE WITNESS: These are very large utilities.

17 MR. RIPPIE: Your Honors, I'm going to object

18 at this point on the grounds that the report is

19 hearsay. And to the extent that it is being used for

20 substantive proof, the author is not here, is not

21 subject to cross-examination. The document has not

22 been adopted by the witness.

1 If the purpose of this is to impeach
2 the witness only, again, I have no such objection;
3 but if it's being offered to make some point of proof
4 about the actual operation of the PG&E tariff, it's
5 improper.

6 MS. LUSSON: It's the former. It's being
7 offered to -- to reference Mr. Cavanagh's conclusions
8 about decoupling and the symmetrical nature of it,
9 and this is an expanded version -- I think he's
10 indicated -- of the article that's attached to his
11 testimony.

12 THE WITNESS: I said it's a draft --

13 MS. LUSSON: Draft.

14 THE WITNESS: -- from which the final
15 article --

16 MS. LUSSON: Is based on.

17 THE WITNESS: Right.

18 MR. RIPPIE: I'm not mincing words here.
19 There's a difference between impeaching and
20 contradicting.

21 If the point is to impeach his
22 testimony, i.e., by suggesting that he's in some way

1 unreliable or what he states -- what he is stating
2 doesn't mesh with the documents on which he relied,
3 that's one thing.

4 But if the point is to try to produce
5 substantive evidence that decoupling is not
6 symmetrical, I object to this.

7 MS. LUSSEN: And I think I indicated,
8 Mr. Rippie, it is the former.

9 MR. RIPPIE: Okay.

10 MS. LUSSEN: I'm using it for impeachment
11 purposes.

12 MR. RIPPIE: Fair enough.

13 JUDGE SAINSBURY: Okay. I heard that magic word.

14 BY MS. LUSSEN:

15 Q Again, so you indicate that -- you would
16 agree that's \$24.64 million that was surcharges to
17 customers?

18 Would you agree?

19 A As I said, it's a
20 one-quarter-of-one-percent surcharge for 2006.

21 Q That's 24.64 million; is that right?

22 A Yes.

1 Q Okay. And the reported decoupling
2 adjustment for 2007 was 148.9 million. Would you
3 agree?

4 A I would. You are looking at one utility --

5 Q Mr. Cavanagh --

6 A -- out of 40 covered in the study.

7 Q I would ask you --

8 A Yes.

9 Q You can feel free to discuss -- have issues
10 with these numbers in redirect. I would ask you to
11 just simply ask -- answer the questions.

12 A Yes, a 1.4 percent adjustment in 2007.
13 \$148 million.

14 Q In 2008, customers were assessed a
15 decoupling adjustment of 11.4 million. Would you
16 agree?

17 A Yes, I would.

18 Q And --

19 A One-tenth of one percent.

20 Q 103.55 million?

21 A In 2009. Nine-tenths of one percent of
22 total revenue during a period when the utility in

1 question was the largest energy efficiency investor
2 in North America and delivered net benefits to its
3 customers of energy efficiency measured in the
4 hundreds of millions of dollars --

5 JUDGE SAINSOT: Mr. Cavanagh, just answer the
6 question.

7 THE WITNESS: Yes, ma'am.

8 MS. LUSSON: Thank you, your Honor.

9 BY MS. LUSSON:

10 Q You would agree, wouldn't you, that when
11 customers open their bills, they're not trying to
12 determine whether or not the surcharges that are
13 listed there are a certain percentage of a utility's
14 revenues, are they?

15 A I think they're interested in the total
16 bill.

17 Q Okay. Now --

18 A These bills were going down in every year
19 you've mentioned.

20 Q I'm talking about the decoupling
21 adjustment.

22 A Right.

1 Q Okay.

2 A Which is part and parcel of an energy
3 efficiency integrated initiative, which dwarfed the
4 magnitude of the decoupling adjustment.

5 Q Would you agree, subject to check, that the
6 numbers that we've just identified represents an
7 increase of 808 percent?

8 A 808 percent? No, I would not.

9 Q Would you agree that over the time period
10 presented in the table, PG&E ratepayers saw an
11 average annual increase of 77.6 million based on
12 those decoupling adjustment numbers there?

13 A And if you're right about that, it's an
14 average adjustment of about two-thirds of one percent
15 per year.

16 Q And turning to Page 14 of this report.

17 A Yes.

18 Q And the dollar-per-therm decoupling
19 adjustment there, do you see those in 2005 to 2009?

20 A Yes.

21 Q And you would agree those are all positive
22 numbers, indicating a surcharge?

1 A Yes. Southwest Gas has among the most
2 aggressive efficient programs in the entire gas
3 industry.

4 Q And would you agree that over the five-year
5 period listed there, the sum of the adjustments is
6 .127 percent per therm?

7 A Yes. It looks like an average of about two
8 percent per year.

9 There is, if I might point out --

10 Q There's no question pending, Mr. Cavanagh.

11 Looking at Page 29 for Piedmont
12 Natural Gas in North Carolina, you would agree that
13 there are a series of residential adjustments listed
14 in the second column?

15 A Yes.

16 Q And those are all positive adjustments, not
17 credits?

18 A Those appear to be all positive
19 adjustments, yes.

20 Q And the percent of the rate is listed next
21 to those numbers?

22 A Yes.

1 Q And is it your testimony that these are
2 uniformly modest increases?

3 A Some of these are higher than I would
4 regard as modest, which is why we proposed a rate cap
5 in our -- and these are for gas, not electricity.

6 But you are cherry-picking the
7 increases and you're ignoring the overall conclusion
8 of Miss Lesh's report, which at Page 67 is, indeed,
9 that adjustments go both ways, balanced, almost
10 always under two percent and, typically, with a rate
11 impact of \$2.00 a month for the average electric
12 customer, a dollar-fifty or less per month for the
13 average natural gas customer. Going both ways.

14 MS. LUSSON: I would move to strike everything
15 after the question of would you consider these to be
16 uniformly modest increases, and I think Mr. Cavanagh
17 indicated, no, he did not, which is why he was
18 offering a rate cap.

19 JUDGE DOLAN: Sustained.

20 BY MS. LUSSON:

21 Q Turn to Page 30 of this document.

22 A Yes.

1 Q If you could look at Northwest Natural Gas.

2 A Yes, by all means.

3 Q And would you agree that there was a

4 positive decoupling adjustment incurred by customers

5 in 2003 of 3.6 million?

6 A Yes.

7 Q 2.1 in 2004 million -- 2.1 million?

8 A Yes.

9 Q And 6.2 in 2005?

10 A Yes. All well under one percent.

11 Q So the adjustment essentially tripled from

12 2004 to 2005?

13 A Yes. I hope you're going to get on to the

14 next three years now.

15 Q And there were reductions in 2006 and 2008?

16 A Yes.

17 Q Did you ever attempt to tabulate the number

18 of rate increases versus decreases associated with

19 the Lesh report on -- if this is -- this, I think

20 you've testified, is the basis for the Lesh report

21 that you attached to your testimony?

22 A The Lesh report does precisely that.

1 You'll find it starting on Page 67.

2 You'll also find a table showing you

3 all of the rate adjustments up and down on Page 68.

4 Q And is it your testimony that that report

5 tabulates all of the numbers in this document?

6 A Yes.

7 JUDGE SAINSOT: And this report is attached to

8 your testimony?

9 THE WITNESS: Yes.

10 MR. MOORE: Exhibit 2.1.

11 JUDGE SAINSOT: Okay. Got it.

12 Thank you.

13 BY MS. LUSSON:

14 Q I want to show you what has previously been

15 marked as AG Cross Exhibit 12 -- 11.

16 A Is this the Washington --

17 Q Yes.

18 A -- State statement?

19 Sure.

20 Q And are you familiar with that report?

21 A I'm generally familiar with it. It would

22 be helpful if I could have a copy.

1 Q Yes.

2 JUDGE SAINSOT: Ms. Lusson --

3 MS. LUSSON: And I think the court reporter --

4 I'm sorry, the administrative law judge already has a

5 copy.

6 THE WITNESS: Got it.

7 BY MS. LUSSON:

8 Q Now, if you could turn -- now, again, this

9 document is a report by -- it's entitled Report and

10 Policy Statement on Regulatory Mechanisms, Including

11 Decoupling, to Encourage Utilities to Meet or Exceed

12 Their Conservation Targets --

13 A Yes.

14 Q -- issued by the Washington State Utilities

15 and Transportation Commission on November 4th, 2010.

16 Would you agree?

17 A Yes.

18 Q And --

19 MR. RIPPPIE: Before you proceed, I just want to

20 make sure we're operating under the same caveat as

21 with Mr. McDermott; that is, that this is being

22 offered to the extent that what pages are read into

1 the record solely for the purpose of impeachment.

2 MS. LUSSON: That's correct.

3 MR. RIPPIE: Thank you.

4 BY MS. LUSSON:

5 Q And would you accept that this is a true
6 and correct copy of that report --

7 A Yes.

8 Q -- issued by the Commission?

9 In the introductory paragraph there,
10 it states that the Commission has undertaken an
11 inquiry into improving performance of investor-owned
12 electric and natural gas utilities in the delivery of
13 conservation resources to customers?

14 A Yes.

15 Q And the inquiry in this docket examined
16 whether the Commission should adopt new or modified
17 regulations or otherwise adopt policies to address
18 declines in revenues due to utility-sponsored
19 conservation or other causes of conservation.

20 Do you agree --

21 A Yes.

22 Q -- that that states that?

1 Now, turning to Page 8 of that report.
2 The -- the report lists three different decoupling
3 mechanisms that are being examined. Do you see that?
4 A Yes.
5 Q And one is limited decoupling, which is
6 described as a lost margin recovery mechanism. And I
7 think you referred to lost margin recovery mechanisms
8 in your testimony, don't you?
9 A We do not support them. That's right.
10 Q But you do not support them. Correct.
11 And that's a mechanism designed to
12 recover lost margin due only to the conservation
13 efforts of the utility, including educational
14 information?
15 A Yes. That's right.
16 Q And then there's a full decoupling. And I
17 think what they mean here, if you go on to read, it's
18 the full revenue average use per customer decoupling,
19 which I think is the kind of decoupling that you're
20 endorsing --
21 A Yes.
22 Q -- in your testimony?

1 And then the third kind is specific
2 incentives, including those authored by the EIA. And
3 EIA stands for the Energy Information Act --
4 Washington -- I'm sorry. Washington Energy
5 Independence Act.

6 A I don't remember what it stands for, but I
7 do believe that is the Washington State statute, yes.

8 Q So now, if you look at Paragraph 12, let's
9 focus on the first two options, limited and full
10 revenue decoupling --

11 A Right.

12 Q -- in terms of what was concluded by this
13 Commission in this order as compared with your
14 recommendations in your testimony.

15 Turn to Page 13 of that report; and
16 there, it references the mechanism?

17 A Yes.

18 Q And if you look at Paragraph 19, would you
19 agree that the mechanism that they're referring to
20 there is the revenue -- the limited revenue
21 decoupling?

22 A Right. They propose to limit that only to

1 natural gas utilities. As they say on Page 16, for
2 electric utilities, they want to look at full
3 decoupling.

4 Q All right.

5 A This was a significant departure from past
6 Commission practice which had been quite hostile to
7 full decoupling for electric utilities.

8 Q Okay. Now, if you move down to the
9 following page, 14, Paragraph 22.

10 A Yes.

11 Q Is it correct there that the Commission
12 concluded, While customer use of natural gas has been
13 declining in recent years, this does not appear to be
14 the case for electric utilities. Our experience and
15 understanding informs us that electric -- electricity
16 use per customer has been either steady or even
17 increasing.

18 A Just like in Illinois. Yes.

19 Q We attribute this trend generally to the
20 addition of so-called plug load associated with
21 increased consumer use of appliances and electronic
22 devices. Such increased usage could become more

1 pronounced in the future, should consumers shift away
2 from automobiles powered by petroleum and toward
3 electric vehicles.

4 Would you agree that that's what the
5 Commission stated?

6 A I would.

7 JUDGE SAINSOT: Miss Lusson, do you have a lot
8 more?

9 MS. LUSSON: No, I don't.

10 JUDGE SAINSOT: Okay. I mean, again, don't --
11 I just meant time-wise.

12 BY MS. LUSSON:

13 Q Then would you agree that -- turning to the
14 next page, that the Commission stated, We believe
15 lost and found margins are likely to be in better
16 balance for electric utilities, which argues against
17 using a limited decoupling mechanism for such
18 companies to address the revenue impacts of
19 conversation -- conservation.

20 Would you agree that's what the --

21 A Yes, that's what it says.

22 Q And you would agree that this conclusion is

1 inconsistent with NRD's position in this case --
2 NRDC's position in this case, is that --
3 A No. It's completely consistent with NRDC's
4 position in this case.
5 Q It's your position that -- that electric --
6 A Electricity has -- electricity consumption
7 has been growing --
8 Q Mr. Cavanagh --
9 A I'm sorry.
10 JUDGE SAINSOT: Mr. Cavanagh?
11 THE WITNESS: Yes.
12 JUDGE SAINSOT: Sorry.
13 BY MS. LUSSON:
14 Q Now, you understand that the Company's
15 position in this case is that their revenues for the
16 residential class are declining; is that right?
17 JUDGE DOLAN: Ms. Lusson, you need to speak
18 into your microphone.
19 BY MS. LUSSON:
20 Q Sorry.
21 Revenues per customer are declining in
22 the residential class?

1 A I understand that the Company has projected
2 declines if the state's statutory targets are met,
3 but that's the big if.

4 Q And so you're -- the fact that the
5 Commission concluded that loss and found margins are
6 likely to be in better balance for electric
7 utilities, which argues against using a limited
8 decoupling mechanism, which we've already stated is
9 the decoupling mechanism --

10 A You're mistaken. On this, I think you're
11 just mistaken. So let me -- what the Commission is
12 saying here is we need to go beyond limited
13 decoupling for electric utilities. We need to go to
14 full decoupling or at least consider it, which is
15 what they go on to say on the next page. And I agree
16 with that; that is, electricity use is increasing
17 much more rapidly than customer growth for the
18 electric sector than the gas sector.

19 Decoupling is more important, more
20 urgently needed on the electric side than the gas
21 side. That's what the Washington Commission's
22 saying. That's what I'm saying.

1 Q Would you agree that this -- at this time,
2 that the Washington Commission concluded that, at
3 this time, they would not endorse decoupling for
4 electric utilities?

5 A You're mistaken.

6 Look at Page 16, Paragraph 27. This
7 was the moment when what the Commission said is,
8 Look, we believe that a properly constructed full
9 decoupling mechanism can be a tool that benefits the
10 customer (sic) and its ratepayers, and the Commission
11 invited proposals.

12 This was a dramatic change from the
13 Commission's earlier position of hostility to full
14 decoupling for electric utilities.

15 Q And is it -- is it your testimony that this
16 is the kind of decoupling mechanism that they're
17 endorsing here is the same kind of decoupling --

18 A Full decoupling.

19 Q -- that you're proposing?

20 A Yes.

21 Q And full -- and what is your understanding
22 of full decoupling as defined by the Washington

1 Commission?

2 A Full decoupling means that you break the
3 link between the Company's financial health and
4 sales. You don't try to distinguish between how much
5 of the fluctuation in sales is attributable to
6 conservation programs and how much to something else.

7 Full decoupling is the alternative to
8 the lost margin recovery that is rejected in our
9 testimony for the reasons stated there.

10 Q Isn't there a kind of full decoupling that
11 breaks -- that does not look at per customer
12 revenues, but, in fact, looks at the Company's
13 overall revenues and expenses and adjusts it based on
14 a specific baseline level established by a
15 Commission?

16 A Every decoupling mechanism adjusts the
17 fixed cost revenue requirement between rate cases.
18 Some use the customer count. Some use more
19 complicated indices like California's attrition
20 index. But every decoupling mechanism -- every full
21 decoupling mechanism adjusts the fixed cost revenue
22 requirement between rate cases in a manner approved

1 in advance by the Commission.

2 Q And there are full decoupling mechanisms
3 that incorporate revenues gained from new customers
4 and look at a company's overall earnings and not just
5 focus on a particular class.

6 Would you agree?

7 A I would agree that there are mechanisms
8 that focus on more than one class.

9 Q Would you agree that those kind of full
10 decoupling mechanisms that I'm referring to actually
11 true-up all of a company's revenues expense -- and
12 expenses to ensure that the company is not
13 over-earning and that it is not incurring revenues
14 over and above baseline levels set in the decoupling
15 mechanism?

16 A No, because -- no decoupling mechanism, as
17 far as I know, adjusts all revenues. The focus is
18 always the fixed cost revenue requirement. We're not
19 looking at variable costs. We're not looking at fuel
20 costs.

21 Within the context of fixed costs,
22 there are differences in the coverage of the

1 mechanisms, which customer classes are included, and
2 there are differences in how often the adjustments
3 are made and there are differences in rate caps; and
4 all of that is covered in, for example, Pamela Lesh's
5 article which reviews all of the different design
6 features of all of the mechanisms.

7 Q Mr. Cavanagh, you would agree, wouldn't
8 you, that there are decoupling mechanisms such as the
9 one approved in Hawaii recently -- are you familiar
10 with that one?

11 A Yes.

12 Q And that was a full revenue decoupling
13 mechanism, not a revenue per customer mechanism.
14 Wouldn't you agree?

15 A No. I think a revenue decoupling mechanism
16 is a full decoupling mechanism.

17 Q But you're -- I'm -- but the one that was
18 approved in Hawaii is different than what the NRDC is
19 proposing, isn't it?

20 A It has -- it covers more customer classes.
21 I think, for residential, it uses a per customer
22 model, though.

1 Q It covers more customer classes --

2 A Yes.

3 Q -- that you've stated?

4 Now, that's a key distinction, isn't

5 it?

6 If revenues and expenses and usage is

7 changing in different customer classes, then there

8 are not differences that -- the Company is then not

9 allowed necessarily to retain revenues gained in

10 those other classes?

11 A Here's the difference, and I think it's an

12 important one:

13 Illinois and ComEd, in particular, has

14 the highest fraction of fixed costs recovered

15 volumetrically in the residential sector of any

16 utility that I've ever reviewed.

17 Q Mr. Cavanagh, let me stop you there.

18 Do you recall what my question was?

19 A Yes, you -- well --

20 MS. LUSSON: Could I have the question read

21 back, please.

22 (Record read as requested.)

1 MR. MOORE: And he's giving the answer to that.

2 THE WITNESS: I thought I was.

3 The point is that in Illinois and for
4 ComEd specifically, almost all of the relevant
5 revenues are in the residential class. That's the
6 difference.

7 BY MS. LUSSEN:

8 Q The revenue per customer mechanism
9 you're -- you're recommending, yes or no, does not
10 incorporate what's happening with revenues in other
11 customer classes into the calculation for the
12 decoupling surcharge or credit? Is that true?

13 A Yes, because there are very few such
14 revenues.

15 Q Okay. Could you look at page --
16 Paragraph 24 in the Washington order, which is on
17 Page 15.

18 A Sure.

19 Q Would you agree that there, the Washington
20 Commission concluded that, Finally, we give weight to
21 the requirements of the Energy Independence Act which
22 requires electric utilities to obtain all

1 cost-effective conservation that is feasible or face
2 penalties for failure to do so. Therefore, there is
3 less of a need to provide an incentive to electric
4 utilities, given that the EIA already provides ample
5 incentive.

6 Would you agree that the Commission
7 concluded that?

8 A I would, but I need to explain. No, this
9 is crucial. You're --

10 Q I understand it's crucial to you,
11 Mr. Cavanagh --

12 A The word "incentive" --

13 Q You'll have an opportunity on redirect --

14 JUDGE SAINSOT: Hold on. Hold on.

15 THE WITNESS: Very good.

16 JUDGE SAINSOT: Yeah, you'll get your chance on
17 redirect.

18 THE WITNESS: All right.

19 BY MS. LUSSEN:

20 Q And you would agree, wouldn't you, that
21 based on your familiarity with Section 8-103 of the
22 Public Utilities Act that, similarly, ComEd is

1 subject to penalties if it does not achieve the
2 energy savings required in that Act?

3 Would you agree that statute requires
4 that of the company?

5 A I agree that in both cases, there are
6 penalties for not achieving targets, yes.

7 Q Okay. Now, let's look at Paragraph 5 of
8 this order, full decoupling for electric and gas
9 utilities.

10 And I think now, earlier, we were
11 debating whether or not this Commission concluded
12 that full decoupling was appropriate for electric
13 utilities.

14 A Right.

15 Q Do you recall that?

16 Would you agree at Paragraph 25, the
17 Commission states, Though we recognize the potential
18 benefits to ratepayers, adoption of full decoupling
19 gives us some pause for two reasons: First,
20 relatively few other state commissions have adopted
21 any form of decoupling for electric utilities and
22 only some of those mechanisms were full decoupling

1 mechanisms. So adopting such a mechanism for
2 Washington's electric utilities would put the
3 Commission in the company of a relatively small
4 minority of commissions nationwide. This means that
5 the Commission does not yet have the benefit of
6 lessons learned in other jurisdictions as it develops
7 and refines a full decoupling mechanism.

8 Would you agree the Commission
9 concluded that?

10 A Yes.

11 Q Now, turn to Paragraph 27 of that order.

12 As I understand your testimony, you
13 are recommending that the Commission not impose any
14 sort of reduction in the Company's return on equity
15 if a decoupling mechanism is approved; is that right?

16 A That's our recommendation, yes.

17 Q Looking at Paragraph 27, it states -- would
18 you agree -- Nevertheless, while a close call, we
19 believe that a properly constructed full decoupling
20 mechanism that is intended between general rate cases
21 to balance out both lost and found margin from any
22 source can be a tool that benefits both the Company

1 and its ratepayers. By reducing the risk of
2 volatility of revenue based on customer usage both up
3 and down, such a mechanism can serve to reduce risk
4 to the company and, therefore, to investors which, in
5 turn, should benefit customers by reducing a
6 company's debt and equity costs.

7 This reduction in costs would flow
8 through to ratepayers in the form of rates that would
9 be lower than they otherwise would be, as the rates
10 would be set to reflect the assumption of more risk
11 by ratepayers.

12 Would you agree that that states that
13 there?

14 A Yes.

15 Q And would you agree that the Commission
16 concluded that, in fact, there should be a reduction
17 to return on equity if this kind of decoupling is
18 approved?

19 A No. I think what the Commission is saying
20 is we expect that there will, in fact, be a reaction
21 in the marketplace; and if there is, it will be
22 flowed through to customers, and I agree with that.

1 Flowed through to ratepayers.

2 (Change of reporters.)

3 Q Now, on Page 28 -- Paragraph 28?

4 A There is no -- Page 17, Paragraph 28?

5 Q Yes.

6 Now, Element 2 there, impact on rate
7 of return states, Evidence -- A Utility's request for
8 a full decoupling mechanism must be made in its
9 direct testimony of its rate case filing and include,
10 at a minimum, the following elements, and then it
11 lists several elements.

12 Do you see that?

13 A Yes. Yes.

14 Q And for purposes of your recommendation,
15 did you conduct an impact on the Company's rate of
16 return in this specific docket using the financial
17 information provided by the Company in this case?

18 A I conducted an evaluation of the -- of the
19 different factors addressing risks to the Company and
20 customers under our proposal and concluded that no
21 return on equity adjustment was appropriate, that
22 included weather risk and it also included a

1 balancing between the loss of the upside from
2 increased sales and the protection from the downside
3 of reduced sales. And I concluded on balance no
4 change in return on equity was appropriate, but I
5 tried to do exactly what Item 2 calls for, which is
6 do that analysis.

7 Q And, Mr. Cavanagh, in any of your
8 experiences as a witness for promoting a decoupling
9 proposal, have you ever testified that a return -- a
10 utility's return on equity should be reduced as a
11 result of approval of a decoupling mechanism?

12 A No, I don't believe it should, absent more
13 evidence about the impact of the mechanisms
14 themselves.

15 It's important to remember that as of
16 2008 there were only --

17 MR. TOWNSEND: Your Honors.

18 JUDGE SAINSOT: Okay.

19 THE WITNESS: Okay. Okay.

20 JUDGE SAINSOT: Mr. Cavanagh, you answered the
21 question.

22 MR. TOWNSEND: I move to strike everything

1 after "no."

2 MR. MOORE: No, the remainder was appropriate.

3 JUDGE SAINSOT: What was that?

4 MR. ROONEY: I think he's --

5 MS. LUSSEN: I asked him if he ever recommended

6 a reduction. He said, no, because I don't --

7 MR. ROONEY: I believe his response was

8 responsive to that.

9 JUDGE SAINSOT: Right, but after that it -- he

10 didn't need to go on after that.

11 MR. TOWNSEND: I would move to strike

12 everything after the word "no."

13 JUDGE SAINSOT: Your motion's granted.

14 BY MS. LUSSEN:

15 Q In -- Item 3 on this recommendation

16 includes an earning test and that is when a utility

17 files that a proposed earnings test be applied at the

18 time of a reconciliation of true-up.

19 Do you see that?

20 A I do.

21 Q Does the NRDC -- the NRDC proposal, in

22 fact, does not include such an earnings test, does

1 it?

2 A No.

3 Q Element 4 requires electric utilities to
4 account for the financial benefits of all systems
5 sales or the avoided costs attributable to
6 conservation benefits and to net those out of the
7 potential surcharges created from efficiency?

8 Do you see that?

9 A I do.

10 Q And is it true your NRDC proposal does not
11 include any such mechanism; is that right?

12 A It does not because we did not see a need
13 for it in the special context of ComEd, which is of
14 course a distribution-only enterprise.

15 Q And have you ever recommended such a
16 mechanism in any of your prior testimonies?

17 A Yes, for fully integrated utilities making
18 off-system sales, like PacifiCorp in Washington
19 State.

20 Q Would you agree, if you know, that your --
21 the other witness testifying for NRDC in this
22 proceeding, Mr. McDermott testified in Indiana

1 against an efficiency incentive mechanism that would
2 have netted the gains from off-system sales from
3 revenue decoupling surcharges?

4 A I don't know.

5 MR. RIPPIE: Given that ComEd doesn't make
6 those kinds of sales, what is the relevance to
7 this -- to this case?

8 MS. LUSSON: Well, I -- is that an objection --

9 MR. RIPPIE: Yes.

10 MS. LUSSON: -- to my question?

11 MR. RIPPIE: Yes, it is.

12 MR. TOWNSEND: I think the relevance is that
13 the other witness for NRDC who's talking about
14 decoupling mechanisms, which is one of the reasons
15 why I wanted to discuss this with Mr. McDermott --

16 MR. RIPPIE: So this is impeachment, too;
17 right?

18 MR. TOWNSEND: Yes.

19 MR. RIPPIE: Okay. Withdrawn.

20 MS. LUSSON: I may be done. I just want to
21 double-check.

22

1 BY MR. TOWNSEND:

2 Q I just have a very brief line of questions,
3 Mr. Cavanagh, about a statement that you make in your
4 testimony related to lost revenue mechanisms --

5 A Yes.

6 Q -- and why you don't support them.

7 A Page 14, I think.

8 Q Yes. Thank you.

9 JUDGE SAINSOT: Page 14 of what?

10 BY MS. LUSSON:

11 Q Of your direct.

12 Now, I assume you're familiar with the
13 general concept used for reviewing energy efficiency
14 programs that's known as evaluation monitoring and
15 verification, or EM&V?

16 A Sure.

17 Q Now, in your testimony here, you state
18 that -- later on beginning at Line 287, Lost revenue
19 mechanisms leave intact the linkage between utility's
20 financial health and their retail sales and
21 paradoxically make conservation programs more
22 profitable if they deliver high savings on paper --

1 higher savings on paper than in practice.

2 A Yes.

3 Q Now, when you reference higher savings on
4 paper than in practice, are you making any sort of
5 statement about fudging energy savings numbers or
6 overestimating or what is it that you're referring to
7 there when you state "on paper"?

8 A Exactly what it says, that it is
9 paradoxical and unfortunate that if a program looks
10 better on paper than in practice it's more
11 profitable. I am not suggesting bad motives for
12 anybody, but it's the wrong incentive.

13 Q Are you familiar with the EM&V policies in
14 place for ComEd in its excessing energy efficiency
15 plan?

16 A Not in detail.

17 Q And do you know when that three-year plan
18 ends?

19 A No.

20 Q Do you know what the stakeholder advisory
21 group process is, known as the SAG?

22 A NRDC has been a participant in it, yes.

1 Q And are you generally familiar that that
2 is -- or know that that is a group of stakeholders,
3 including NRDC, the Attorney General's Office and
4 other stakeholders and the electric utilities that
5 have met over a period of the last few years to
6 discuss issues in energy efficiency and the Company's
7 programs and development of Company's programs?

8 A Yes.

9 Q And do you know that the SAG process
10 involved stakeholders collaborating with the two
11 major electric utilities in Illinois in designing an
12 EM&E -- V framework for the evaluation of Years 1
13 through 3 of ComEd's energy efficiency plan?

14 A Subject to check, sounds reasonable.

15 I support EM&V, of course.

16 Q I understand that.

17 So is it your testimony that lost
18 revenue mechanisms provide an incentive for a utility
19 to make a plan look better on paper than it is in
20 reality?

21 A Yes.

22 Q So your concern then for a loss revenue

1 mechanism for ComEd would be that the savings on
2 paper reported would be better than the reality?

3 A That the incentives are wrong and the
4 process would become much more contentious and
5 litigious because the financial consequences would be
6 much greater.

7 Q And are you familiar with the settlement of
8 issues in the most recent ComEd energy efficiency
9 docket in which stakeholders agreed to settle the
10 parameters for estimating net-to-gross ratios which
11 are a critical element in the evaluation of energy
12 efficiency programs?

13 A I believe we joined that settlement.

14 Q And do you have any reason to believe that
15 the evaluation of the ComEd energy efficiency program
16 will be anything less than thorough as a result of
17 that settlement and the continuation of the SAG
18 process?

19 A No.

20 MS. LUSSON: Thank you, Mr. Cavanagh.

21 No further questions.

22 JUDGE SAINSOT: Mr. Cavanagh, do you need 10

1 minutes?

2 THE WITNESS: No.

3 JUDGE SAINSOT: You're okay?

4 THE WITNESS: I'm fine.

5 JUDGE DOLAN: Okay.

6 MR. COFFMAN: I have just a couple myself.

7 MS. LUSSON: Can I move for the admission of AG

8 Cross-Exhibits -- actually 11, which was previously

9 marked with Mr. McDermott; 12, which was the actual

10 Peoples Gas tariffs; and 13, which is the Lesh

11 Report.

12 MR. RIPPKE: I object, your Honor.

13 JUDGE DOLAN: I have 12 marked as your

14 Washington State inquiry.

15 JUDGE SAINSOT: What's 11?

16 MS. LUSSON: 11 was -- okay. 12 is the

17 Washington State Report. Then 13 was the People Gas

18 tariffs.

19 MR. MOORE: And 14 is Lesh; right?

20 JUDGE SAINSOT: Is Lesh.

21 MR. TOWNSEND: Is Lesh.

22 JUDGE SAINSOT: And what are you moving for?

1 I'm sorry.

2 MS. LUSSON: The admission of all three of
3 those.

4 MR. RIPPIE: The sole purpose for which these
5 documents were used was impeachment. And Ms. Lusson
6 impeached -- or didn't impeach the witness, as the
7 transcript may show. Admitting the substance of the
8 balance of the documents is improper. Each and every
9 one of them is a hearsay document. The authors are
10 not present. They cannot be verified and they should
11 not be admitted.

12 The impeachment use is reflected in
13 the record, and there's -- pursuant to our agreement
14 and there's no issue with that. But putting the
15 substance in is improper.

16 MS. LUSSON: Your Honors, first of all, the --
17 on the Washington rate order Mr. Cavanagh accepted
18 that it was a Commission order. It speaks for itself
19 and it contains the findings of that and --

20 JUDGE SAINSOT: It's still hearsay, though.

21 MS. LUSSON: Right. Understood.

22 But it indicates -- it provides the

1 context for the discussion -- the impeachment
2 discussion.

3 JUDGE DOLAN: Can you even show us anywhere
4 where this is an order? Because I see it says a
5 report in policy statement. I don't see anywhere
6 where it says it's an order.

7 MS. LUSSON: Well, it was assigned a docket
8 number.

9 JUDGE DOLAN: Okay.

10 MR. TOWNSEND: It's the report from that
11 docket.

12 So we would move for that admission.

13 And in terms of the Peoples Gas, are
14 you objecting to the Peoples Gas tariffs?

15 MR. RIPPKE: You know what, I don't care about
16 the Peoples Gas tariff. It's a filed document with
17 the Illinois Commerce Commission. So...

18 MS. LUSSON: And I believe this absolutely is
19 important to get in the record. Mr. Cavanagh
20 indicated he was familiar with it and it was the
21 basis for the report that is attached to his
22 testimony.

1 JUDGE SAINSOT: What is this? What are you
2 holding?

3 MR. RIPPPIE: The original Lesh draft, which is
4 exactly why I'm objecting to it because Ms. Lesh is
5 not here. He vouched for a version of the Lesh
6 article, which was testified was the final version of
7 the article.

8 MS. LUSSON: He also testified that he was
9 familiar --

10 MR. RIPPPIE: Can I just finish?

11 MS. LUSSON: I apologize.

12 MR. RIPPPIE: Sorry.

13 I don't have a problem with it being
14 used for impeachment. We made that clear. But
15 putting it in the record as substantive evidence,
16 it's hearsay. It plainly is and it falls under none
17 of the exceptions under Rule 803 of the Illinois
18 Rules of Evidence. It shouldn't be admitted.

19 JUDGE SAINSOT: Well, I have to tell you, too,
20 I have a real problem with the fact that it's a
21 draft. It's fine if you want to cross-examine him
22 with it, but even that is limited. Things change

1 over time --

2 MR. TOWNSEND: Your Honors --

3 JUDGE SAINSOT: -- as we all know from writing

4 briefs.

5 MS. LUSSON: Your Honors, there's -- in no

6 way does this -- that was Mr. Cavanagh's word. In no

7 way does it indicate this is a draft. It's my

8 understanding that this is the larger comprehensive

9 review for the article. If anything, the article

10 attached to Mr. Cavanagh's testimony is --

11 MR. RIPPKE: If I can add one sentence. This

12 is illustrating my objection. The witness testified

13 to one thing. Miss Lusson's asserting another. I

14 don't know which is true. The author isn't here.

15 This can't come in as substantive evidence.

16 JUDGE SAINSOT: Your objection's sustained.

17 We're not letting these three documents in.

18 All right. We don't object to 13. We

19 can allow 13.

20 JUDGE DOLAN: But 12 and 14 are not.

21

22

1 (Whereupon, AG Cross-Exhibit
2 No. 13 was admitted into
3 evidence.)

4 MR. RIPPPIE: That's the filed Peoples tariff;
5 right?

6 MR. MOORE: And I have no objection to 13.

7 JUDGE SAINSOT: Okay. Mr. Coffman.

8 MR. BERNSTEIN: Thank you.

9 CROSS-EXAMINATION

10 BY

11 MR. COFFMAN:

12 Q Good morning, Mr. Cavanagh.

13 Your proposal in this case does not
14 include any enforceable commitment to increase
15 cost-effective efficiency programs, does it?

16 A No, the State of Illinois, of course, has
17 an enforceable commitment through the efficiency
18 statute.

19 Q And would NRDC generally support mandates
20 to increase the current requirement for energy
21 efficiency investments in the state?

22 A We support the Illinois statutory

1 requirement, which is aggressive and ambitious and
2 want to do everything we can to make sure that it's
3 met.

4 Q Your proposal in this particular case,
5 though, is not linked in any way to that statute, is
6 it?

7 A Oh, yes, it is. It grows in part out of
8 the statute and the magnitude of savings that would
9 be required in order to achieve compliance.

10 Q But your proposal does not require the
11 Commission to identify those changes in usage that
12 are the direct result of the State's statutory
13 mandates, does it?

14 A It doesn't require the Commission to
15 distinguish the different causes for reductions in
16 electricity use, but it absolutely does encompass the
17 full understanding and support of its statutory
18 target, which changes everything in terms of what the
19 utility is expected to do and what we're all hoping
20 to see.

21 Q The linkage you're talking about is your
22 expectation, not an actual --

1 A It's state law.

2 Q The linkage between the state law and your
3 proposal is where?

4 A Is in the resulting effect on the fixed
5 cost recovery of the Company, as explained in detail
6 in my testimony. If the state statute is complied
7 with, the Company in the first five years will lose
8 about \$100 million automatically if nothing is done
9 to change the existing regulatory regime.

10 Q Would NRDC like to see the current
11 statutory requirements increased for energy
12 efficiency?

13 A We'd be delighted, although at the moment I
14 think the focus needs to be on achieving the targets
15 that we've got. Our aspiration for energy efficiency
16 are unbounded, however.

17 Q Would you or NRDC prefer that approach be
18 comprehensively -- including mandates linked with
19 decoupling?

20 A Well, in Illinois our view is the mandates
21 are already there and what's missing is the
22 decoupling.

1 Q Have you studied generally the relationship
2 between increases in utility rates and energy
3 conservation by consumers?

4 A I have generally looked at the benefits to
5 consumers from cost-effective energy efficiency
6 delivered through both utility programs energy
7 efficiency standards.

8 Q But you have not studied the effect of
9 increased rates on energy conservation by consumers?

10 A Oh, I'm sorry. You're asking about the
11 elasticities associated with increased rates and the
12 resulting reductions in customer use?

13 Q Yes.

14 A Yes, I have looked at that as well.

15 Q And has that study led you to any
16 conclusions regarding whether increased rates are
17 directly -- have a causal connection to reduce usage?

18 A As explained in my testimony with some very
19 specific examples, I think there is a relationship
20 but that it's a weak one and that market barriers to
21 energy efficiency prevent price signals from having
22 the full effect that one might expect from normal

1 price elasticity. I guess, an example is in my
2 testimony.

3 Q Does NRDC generally support higher rates as
4 a method of encouraging energy conservation?

5 A No, we do not believe impunitive price
6 increases as a conservation strategy for the reasons
7 identified in my testimony.

8 Q Does NRDC support single issue surcharges
9 for environmental compliance costs?

10 A We don't support single issue ratemaking in
11 any form, which as far as I know is illegal almost
12 everywhere in the country. We do support cost
13 recovery for environmental compliance costs, though.

14 MR. BERNSTEIN: Okay. I have no further
15 questions.

16 JUDGE DOLAN: Mr. Kelter.

17 CROSS-EXAMINATION

18 BY

19 MR. KELTER:

20 Q Good morning, Mr. Cavanagh.

21 A Good morning.

22 Q Are you aware that ComEd has been in for a

1 rate cases in 2005, 2007 and 2009?

2 A No.

3 Q Generally speaking --

4 MR. RIPPIE: Mr. Kelter -- can I hear the

5 question back, please.

6 MR. KELTER: Can I correct that last question?

7 JUDGE SAINSOT: Restate it, please.

8 BY MR. KELTER:

9 Q Mr. Cavanagh, are you aware that ComEd has

10 been in for -- into the Illinois Commerce Commission

11 for rate cases in 2005, 2007 and 2010?

12 A No.

13 Q Generally speaking, when a utility comes in

14 for a rate case, is it fair to say that it adjusts

15 its revenue requirement?

16 A Yes.

17 Q And is it also fair to say that when a

18 company comes in for a rate case, it adjusts its

19 sales projections?

20 A Yes.

21 Q Turning to your testimony -- on your direct

22 testimony to Page 4.

1 A Yes.

2 Q You ask yourself the question, What is the
3 basis for your conclusion that ComEd's fixed cost
4 recovery is strongly tied to its retail sales
5 volumes; correct?

6 A Yes.

7 Q And then at Line 90 on Page 5 in response
8 to that question you state that, If sales lag below
9 those assumptions, the Company will not recover its
10 approved requirement for the fixed cost of
11 distribution service; correct?

12 A Yes.

13 Q Your statement ignores the fact that
14 utilities have an opportunity to reduce their cost of
15 providing distribution service; correct?

16 A No, I acknowledge later and point out that
17 revenue decoupling in no way affects companies'
18 incentive to do that.

19 Q I don't think you answered my question.

20 The question is, does your statement
21 ignore the fact that utilities have an opportunity to
22 reduce their costs of providing distribution service?

1 I didn't ask what you testified later
2 in your testimony.

3 A I was trying to explain that I didn't think
4 I had ignored that. Although, that specific
5 sentence --

6 JUDGE SAINSOT: Mr. Kelter, he answered the
7 question. Move on.

8 BY MR. KELTER:

9 Q Have you analyzed ComEd's current rate
10 filings to determine whether your -- whether in your
11 opinion there's opportunity for the Company to reduce
12 any of its costs?

13 A No.

14 Q And you're aware that Peoples Gas is
15 currently operating under a decoupling proposal;
16 correct?

17 A Yes.

18 Q Are you aware that the current spending cap
19 for Peoples is under its next -- under its latest
20 efficiency plan filing is \$27,117,358?

21 A No.

22 Q Are you aware that Peoples proposes to

1 spend in this plan only \$14,583,373?

2 A No.

3 Q Turning to Page 8 of your testimony. At
4 Line 160 in reference to a hypothetical program
5 reducing energy usage 1 percent annually --

6 A Yes.

7 Q -- you state the automatic five-year loss
8 to shareholders would exceed \$95 million; correct?

9 A Yes.

10 Q If these were not -- is it also fair to
11 say, though, that these would not necessarily be
12 losses if test years were adjusted to reflect the
13 energy efficiency savings?

14 A I address that specific question at
15 Line 101 on Page 5 to 6 and explain my reasons for
16 concluding that, no, merely trying to reflect the
17 savings in the forecast doesn't solve the problem
18 because at the margin the incentives are still all
19 wrong. Every saved kilowatt hour still hurts the
20 Company. Every increased kilowatt hour sales still
21 goes directly to the bottom line. That's what we're
22 trying to fix. You don't fix it by just changing the

1 forecast.

2 Q Well, I don't think that's responsive to my
3 question. I didn't ask if it was a good or bad way
4 to do it.

5 I'm asking if these would necessarily
6 be losses if the test years were adjusted to reflect
7 energy efficiency savings --

8 A They'd still be losses --

9 Q -- they wouldn't necessarily be losses?

10 A They'd still be losses because you do not
11 true-up between rate cases to restore the revenues
12 lost when sales drop.

13 The losses are less -- and I say this
14 also in the testimony at Pages 5 to 6. The Company
15 loses less money if the forecast is more accurate.
16 But at the margin the incentive is still wrong and
17 the same.

18 Q And is that not necessarily influenced by
19 how often a company comes in for a rate case?

20 A No, because most of life will always be
21 lived between rate cases however often the company
22 comes in.

1 Q You don't propose any incentive for
2 ComEd -- in your testimony, you don't propose any
3 incentive for ComEd if it meets its target, do you?

4 A No, the testimony is limited to a
5 decoupling proposal. We would support
6 performance-based incentives in addition, but our
7 testimony does not address them.

8 MR. KELTER: Thank you.

9 JUDGE SAINSOT: Okay. Mr. Rippie.

10 CROSS-EXAMINATION

11 BY

12 MR. RIPPIE:

13 Q I can still say good morning, Mr. Cavanagh.

14 A Good morning.

15 Q I have probably only two or three
16 questions.

17 As I understand your testimony, you
18 believe that if a rate design, including decoupling,
19 reduces the linkage between volume and revenues,
20 particularly fixed cost revenues, revenues associated
21 with the recovery of fixed costs, the effect on
22 return of equity, if any, should incur based on

1 whether the investors change their requirements in
2 response to that program rather than through an
3 explicit regulatory adjustment; true?

4 A Yes.

5 Q And why do you believe that?

6 A Because I am aware of no evidence that
7 decoupling for electric utilities has resulted in
8 reduction of any utilities' cost of capital.

9 And from a shareholder perspective one
10 of the reasons why a minority of states have electric
11 decoupling is that much of the electric utility
12 leadership is nervous about the change. Much of the
13 electric utility leadership has done very well as a
14 consequence of the linkage between financial health
15 and sales. ComEd, in particular, has done relatively
16 well over the last 20 years.

17 And for all of those reasons it is not
18 obvious to me that the balance shifts either towards
19 shareholders or customers from the standpoint of what
20 the cost of capital is going to be. I think we need
21 more evidence. I agree that when we've got it, the
22 Commission should act on the evidence. But I don't

1 think there's adequate basis for a reduction in
2 advance of evidence.

3 Q And the evidence that you're referring to
4 would be the assessment of what the actual
5 investor-required returns are after that program was
6 in place?

7 A Right, possibly including an assessment of
8 similarly situated utilities with decoupling
9 mechanisms.

10 Q Fair enough.

11 MR. RIPPIE: Three questions. Thank you very
12 much.

13 JUDGE DOLAN: Thank you.

14 JUDGE SAINSOT: Mr. Reddick.

15 MR. RIPPIE: Your Honors, we have I think a
16 right to go last. So if this is going to touch on
17 the subject of my cross-examination, I may have more
18 questions.

19 JUDGE SAINSOT: Okay. Well, then lunch will be
20 further postponed.

21 Mr. Reddick, you're going to have to
22 talk into the microphone.

1 MR. REDDICK: Yes.

2 CROSS-EXAMINATION

3 BY

4 MR. REDDICK:

5 Q Mr. Cavanagh, my name is Conrad Reddick. I

6 represent the Illinois Industrial Energy Consumers.

7 And as Mr. Rippie anticipated, my question goes to

8 his last question.

9 Would you --

10 MR. REDDICK: Is it on? I'm sorry.

11 JUDGE SAINSOT: No, but you need to speak up.

12 MR. REDDICK: Am I talking loud enough now?

13 JUDGE DOLAN: Yes.

14 MR. REDDICK: Okay.

15 BY MR. REDDICK:

16 Q Your response -- I lost my train...

17 Referring to Mr. Rippie's inquiry

18 about whether or not there is sufficient evidence to

19 cause you to support a reduction in the return on

20 equity at this point, I believe your answer was you

21 don't believe there is evidence one way or the other?

22 A Right.

1 Q Does that lead you to also say there's not
2 enough evidence to support an increase in the return
3 on equity at this point?

4 A Based on the decoupling mechanism, yes.

5 MR. REDDICK: Thank you.

6 JUDGE SAINSOT: Mr. Rippie?

7 MR. RIPPIE: I don't have another question.

8 JUDGE DOLAN: All right. Thank you.

9 MR. BERNSTEIN: Can I have a few minutes?

10 JUDGE SAINSOT: Sure.

11 (Whereupon, a discussion was had
12 off the record.)

13 JUDGE DOLAN: We're back on the record.

14 REDIRECT EXAMINATION

15 BY

16 MR. MOORE:

17 Q I have a few questions.

18 Mr. Cavanagh, you were asked in regard
19 to AG Cross-Exhibit 14 questions about some of the
20 utilities that have had revenue adjustments that
21 resulted in customers paying additional funds.

22 Calling specifically your attention to

1 Pacific Gas and Electric on Page 11 of that exhibit.
2 What can you say about their energy conservation
3 programs?

4 A PG&E is widely viewed as the leader in
5 energy efficiency. It has the larger annual budget.
6 It has the largest verified savings achieved over the
7 last quarter century. And in assessments of net
8 benefits to PG&E's customers, all of the ones that
9 I've reviewed, reductions in bills associated with
10 those efficiency programs absolutely swamp by orders
11 of magnitude the 1 percent or less upward adjustments
12 in rates covered in the years that I was asked about.

13 Q Calling your attention to Page 14 of that
14 exhibit, you were asked about Southwest Gas
15 Corporation.

16 What is your understanding of their
17 energy conservation programs?

18 A Southwest Gas and Northwest Natural Gas,
19 the other utility that I believe was on the list with
20 showing sustained rates adjustments would be on most
21 lists of the two industry leaders on the natural gas
22 side for energy efficiency. Northwest natural had

1 the first decoupling mechanism in the industry and
2 kept it because of an independent assessment
3 commissioned by the Oregon Public Utilities
4 Commission indicating that the benefits to customers
5 far outweighed the rate adjustments.

6 Q Now, when you say the benefits far
7 outweighed, what do you mean by that?

8 A I mean the reductions in bills associated
9 with cost-effective energy efficiency that the
10 utility helped to achieve.

11 Q You were asked -- also by -- several times
12 about the relationship of regulatory lag to NRDC's
13 proposal. What are your comments on that?

14 A My comments on that reinforcing what I said
15 in the testimony, that is, that all of the positive
16 aspects of regulatory lag involving incentives to
17 minimize costs between rate cases are retained under
18 decoupling. Decoupling doesn't guarantee a
19 particular level of profit and in no way affects a
20 utility's incentive to cut costs between rate cases
21 and deliver efficiencies.

22 MR. MOORE: I have no other questions.

1 JUDGE SAINSON: Any recross?

2 MS. LUSSON: I just have one question.

3 RECROSS-EXAMINATION

4 BY

5 MS. LUSSON:

6 Q Mr. Cavanagh, you just referenced PG&E's

7 decoupling -- or results in energy conservation

8 programs in your response to Mr. Moore's question.

9 Do you recall that?

10 A Yes.

11 Q Would you agree that PG&E has a reduction

12 to its return on equity as a part of the

13 reconciliations that go on in that state?

14 A No.

15 Q You don't agree with that?

16 A I don't agree with that.

17 Q Okay.

18 A There's no targeted reduction in return on

19 equity in California associated with decoupling,

20 never has been.

21 Q You would agree, wouldn't you, that the

22 reconciliation and the true ups that occur in

1 California that you've discussed in your response to
2 Mr. Moore's question are not per customer revenue
3 decoupling, would you agree?

4 A No, they use attrition instead.

5 MS. LUSSON: Thank you.

6 JUDGE DOLAN: All right. Thank you,
7 Mr. Cavanagh.

8 JUDGE SAINSOT: Mr. Moore?

9 Wait a minute. Is there anybody else
10 that has any recross?

11 MR. MOORE: I have no redirect.

12 JUDGE SAINSOT: You're excused. Thank you,
13 Mr. Cavanagh.

14 JUDGE DOLAN: Thank you.

15 JUDGE SAINSOT: Okay. We're going to come back
16 at 1:00.

17 (Whereupon, a recess was taken.)

18 JUDGE DOLAN: Then with that, then we can go
19 back on the record then.

20 Miss Lusson, are you ready to proceed?

21 MS. LUSSON: Yes. Thank you, your Honor.

22

1 MICHAEL L. BROSCHE,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY
6 MS. LUSSON:
7 Q Mr. Brosch, please state your name and
8 business address for the record.
9 A Michael L. Brosch, P.O. Box 481934, Kansas
10 City, Missouri.
11 Q In your hands -- and I believe we've --
12 JUDGE DOLAN: Miss Lusson --
13 JUDGE SAINSBURY: Let's swear him in real quickly
14 (Witness sworn.)
15 BY MR. TOWNSEND:
16 Q Mr. Brosch, before you have your direct
17 testimony in this case, which is marked as AG/CUB
18 Exhibit 1.0 --
19 A Yes.
20 Q -- along with Attachments AG/CUB
21 Exhibits 1.1 through 1.8. Do you have that there?
22 A I do, yes.

1 Q And was this direction prepared by you
2 or -- was this testimony prepared by you or under
3 your supervision?

4 A It was, yes.

5 Q And do you have any corrections or
6 additions to make to that testimony at this time?

7 A I do not.

8 Q And if I asked you today the same questions
9 that appear in that testimony, would your answers be
10 the same?

11 A They would.

12 Q Also before you, Mr. Brosch, is your
13 rebuttal testimony, AG/CUB Exhibit 7.0. Do you have
14 that?

15 A I do, yes.

16 Q Along with that are Attachments 7.1 through
17 the 7.5?

18 A That's correct.

19 Q Were those documents prepared by you or
20 under your supervision?

21 A Yes, they were.

22 Q And do you have any corrections or

1 additions to make to those at this time?

2 A I do not.

3 Q And if I asked you the same questions that
4 appear in that testimony today, would your answers be
5 the same?

6 A Yes, they would.

7 Q Also before you you have AG/CUB
8 Exhibit 12.0, which is your rebuttal rate design
9 testimony in this proceeding.

10 A Yes.

11 Q Was this testimony prepared by you or under
12 your supervision?

13 A Yes, it was.

14 Q And do you have any changes or corrections
15 to make to that testimony?

16 A I do not.

17 Q And if I asked you the same questions that
18 appear therein today, would your answers be the same?

19 A Yes, they would.

20 MR. TOWNSEND: Your Honors I have tendered
21 three copies of all of those documents, and I would
22 move for the admission of AG/CUB Exhibits 1.0, 1.1

1 through 1.8, 7.0, 7.1 through 7.5 and AG/CUB
2 Exhibit 12.0.

3 JUDGE SAINSOT: Any objection?

4 MR. RATNASWAMY: Your Honors, I have, to be
5 innovative, a friendly objection. Mr. Brosch's
6 rebuttal on Page 29 says he has an Exhibit 7.6, and
7 he identifies it and discusses it. I do not believe
8 it was ever filed on e-Docket or served, but I'm fine
9 with it if you also want to put it in. But if they
10 don't, then I think they have to do an errata.
11 Unless there's already an errata version that I'm not
12 aware of. Page 29 of his rebuttal.

13 MS. LUSSON: That would be the response to AG
14 Data Request 14.05.

15 MR. RATNASWAMY: Right.

16 MS. LUSSON: Well, that may be, in fact, an
17 omission, your Honors. And if the Company has no
18 objection, we would file that on e-Docket and tender
19 three copies for the record as well.

20 JUDGE SAINSOT: What page does he refer to 7.6?

21 MS. LUSSON: Page 29.

22 THE WITNESS: Line 644.

1 JUDGE DOLAN: Yeah.

2 JUDGE SAINSOT: And the Company has no
3 objection to the filing of this document?

4 MR. RATNASWAMY: That's correct.

5 JUDGE SAINSOT: Okay. And you don't have it
6 with you, do you, Miss Lusson?

7 MS. LUSSON: I do not.

8 JUDGE SAINSOT: That's okay. I'm just asking.

9 MR. RATNASWAMY: I have one copy. It's not
10 marked as an exhibit. It's my only copy.

11 MS. LUSSON: And I would note, for the record,
12 I will take full responsibility for that omission.
13 That was our filing mistake, not Mr. Brosch's.

14 JUDGE SAINSOT: Well, there are a couple of
15 things we can do.

16 MS. LUSSON: What we can do, if it's okay with
17 you, your Honors, is at the break I can make three
18 copies and then we'll file it on e-Docket this
19 afternoon.

20 JUDGE SAINSOT: Well, I don't -- if nobody
21 objects, you don't even have to file it on e-Docket,
22 really.

1 JUDGE DOLAN: Just attach it.

2 JUDGE SAINSOT: Just attach it.

3 MS. LUSSON: Okay.

4 JUDGE SAINSOT: All right.

5 MS. LUSSON: Thank you for pointing that out,
6 Counsel.

7 JUDGE SAINSOT: Okay. That being the case and
8 noting for the record that ComEd has no objection to
9 the adding of AG/CUB Exhibit 7.6, your motion is
10 granted, Counsel, and AG/CUB Exhibits 1.0 and 1.1
11 through 1.8, 7.0 and 7.1 through 7.6 and 12.0 are
12 admitted into evidence.

13 (Whereupon, and AG/CUB
14 Exhibit Nos. 1.0 and 1.1
15 through 1.8, 7.0 and 7.1
16 through 7.6 and 12.0 were
17 admitted into evidence.)

18 MS. LUSSON: Thank, your Honors.

19 We tender Mr. Brosch for cross.
20
21
22

1 CROSS-EXAMINATION

2 BY

3 MR. JENKINS:

4 Q Good afternoon, Mr. Brosch. Alan Jenkins
5 for The Commercial Group.

6 Just a couple questions to clarify
7 something in your rebuttal testimony, AG/CUB 12.0. I
8 believe in Lines 170 you stated that, Without a
9 significant ROE reduction decoupling represents a
10 windfall to ComEd.

11 Do you have an opinion as to how much
12 ROE should be reduced if the Commission adopts NRDC's
13 decoupling proposal?

14 A I have not conducted any study or
15 quantified an adjustment. I've observed in other
16 jurisdictions adjustments in the neighborhood of 50
17 to 75 basis points.

18 Q All right. Is there any relevance of those
19 decisions to the current proceeding here, do you
20 think?

21 A Well, you asked in the context of
22 decoupling.

1 Q Yes.

2 A The decoupling engagement I was last
3 involved with was in the State of Hawaii where the
4 adjustment was of that magnitude and just approved by
5 the Commission --

6 MR. RATNASWAMY: I move to strike actually this
7 question and the preceding question. They seem to
8 just be supplemental direct. I'm not -- this doesn't
9 seem like cross at all. It's offering a new opinion.

10 MR. JENKINS: It's seeking a clarification. He
11 said there should be a significant ROE reduction and
12 I was just inquiring as to what significant might
13 mean.

14 JUDGE SAINSOT: Do you know offhand where he
15 says the -- about -- where he talks about the ROE
16 reduction?

17 MR. JENKINS: Yeah, I believe it's Line 170,
18 AG/CUB 12.0. And there's a discussion beginning from
19 Lines 147 onward.

20 JUDGE SAINSOT: Overruled.

21 BY MR. JENKINS:

22 Q Do you have an opinion whether if ComEd's

1 alternative regulation proposal is adopted, whether
2 this would impact ComEd's risk profile?

3 MR. RATNASWAMY: Your Honors, may I have a
4 continuing objection? It still seems like
5 supplemental direct. Especially to go from a word to
6 a quantified number.

7 JUDGE SAINSOT: Mr. Jenkins.

8 MR. JENKINS: I'm just clarifying his position.
9 It seems similar to a decoupling proposal in terms of
10 risk.

11 JUDGE SAINSOT: Did you ask him how many basis
12 points?

13 MR. JENKINS: I did not yet. I was just laying
14 a groundwork for it.

15 JUDGE SAINSOT: Overruled.

16 THE WITNESS: I believe that my testimony in
17 the alternative regulation docket does not speak to
18 equity cost adjustments. It's my belief that
19 granting relief in the form requested by ComEd in
20 that docket would mitigate risk to the benefit of the
21 Company and its shareholders. I have not quantified
22 an adjustment.

1 MR. JENKINS: Thank you. Nothing further.

2 JUDGE DOLAN: Mr. Ratnaswamy.

3 CROSS-EXAMINATION

4 BY

5 MR. RATNASWAMY:

6 Q Good afternoon, Mr. Brosch.

7 A Good afternoon.

8 Q One of the subjects on which you testify is

9 cash working capital; correct?

10 A Yes, it is.

11 Q And you propose that the amount in rate

12 base for ComEd should be zero?

13 A Yes, the same as allowed in the last rate

14 case.

15 Q Okay. I asked you what you proposed in

16 this case, Mr. Brosch. Do you understand that?

17 A I do.

18 Q Do you have copies of your responses to

19 data requests?

20 A I think so.

21 Q Okay. There's a number where I might refer

22 to them not because I intend to use them as an

1 exhibit, just because I think they might be helpful
2 to speed things along.

3 A Okay.

4 Q The first of those is 2.18. Do you have
5 that?

6 A Let me see.

7 Yes, I do.

8 Q Okay. Would it be a fair paraphrase of
9 that to say that you review and comment on, but you
10 do not perform lead/lag studies?

11 A Well, certainly in recent history and
12 experience my role and responsibility has been to
13 respond to filings made by utility companies seeking
14 rate increases and where the utility company has an
15 obligation or burden to make a filing and prove up
16 its numbers, including cash working capital. We're
17 reviewing and responding to those numbers rather than
18 starting from scratch and creating the study.

19 Q And do you have your response to Data
20 Request 2.35?

21 A Yes.

22 Q Okay. And, again, I'm going to paraphrase

1 and you tell me if it's a fair paraphrase. The
2 question refers to the 2009 North Shore Peoples case,
3 the 2009 Ameren case and the 2008 Nicor rate case.
4 Is it correct to say that you indicated in that
5 response that you did not analyze the revenue lag
6 approach or cash working capital results of those
7 cases?

8 A There's an objection and then a response
9 that you described where that's correct. My role was
10 not to analyze those lags in those cases.

11 Q All right. Thank you.

12 Could you look at AG/CUB Exhibit 1.5,
13 please.

14 A Yes, I'm there.

15 Q Okay. Was it your intention that the
16 utilities identified on that exhibit be comparable to
17 ComEd for purposes of the issue of the collections
18 revenue lag?

19 A The exhibit was prepared and presented to
20 support my testimony, which is that the ComEd
21 proposed overall revenue lag and collection lag, in
22 particular, are extraordinarily long relative to all

1 of my experience with other utilities. I prepared
2 this exhibit to compile for the utilities shown there
3 some support for that opinion.

4 And I believe that these are all large
5 utilities, many of which serve large metropolitan
6 areas such as Phoenix, Honolulu, St. Louis and
7 Dallas, among others.

8 Q The Dallas one is a gas utility, isn't it?

9 A It is, yes.

10 Q All the utilities you -- oh, and although I
11 don't intend to refer to it, I'm going to be asking a
12 number of questions that appeared in Data Request
13 Response 2.24. So you might want to have that handy.

14

15 A I'm there.

16 Q Okay. So all of the utilities on your
17 Exhibit 1.5 are in other states; correct?

18 A Yes.

19 Q Okay. And you picked jurisdictions
20 where -- is it pronounced UtiliTech, is that right --

21 A Yes.

22 Q -- your company?

1 UtiliTech is frequently employed and
2 you personally are readily familiar with the
3 applicable regulatory policies regarding cash working
4 capital; is that right?

5 A Yes, UtiliTech is involved in all of the
6 states. Different members of the firm may have
7 addressed the lead/lag studies for the specific
8 utilities involved, but I have knowledge of the
9 approaches used and personal knowledge of some of the
10 studies.

11 Q Okay. Well, as I understand it from your
12 response to Subpart L of the data request response,
13 you did not research the underlying study methods,
14 although you believe four of the utilities use the
15 accounts receivable turnover analysis method; is that
16 right?

17 A You said Part L?

18 Q Yes.

19 A Yes, those were -- the four that are listed
20 at the end of that response are the utilities where I
21 recall the specific methodology that was used.

22 Q All right. And is it correct you did not

1 review the underlying work papers and other
2 documents? If it helps --

3 A I'm confused.

4 Q -- I'll refer you to Subpart B.

5 A I'm confused by when we're asking, and I
6 may have at one time. I think my --

7 Q I'm sorry.

8 Do you see Subpart B of the data
9 request?

10 A I do see that, yes.

11 Q Okay. Is it correct that you indicated
12 in -- at least in that response -- that you did not
13 review -- well, you don't have the underlying work
14 papers and other documents?

15 A That's what the response says.

16 Q Okay. In your rebuttal could you look at
17 Page 25, please.

18 JUDGE SAINSOT: And that's AG/CUB Exhibit 7.0?

19 MR. RATNASWAMY: Oh, yes. Thank you.

20 MS. LUSSON: What page? I'm sorry.

21 JUDGE SAINSOT: Page 25.

22 MR. RATNASWAMY: Page 25.

1 THE WITNESS: I'm there.

2 BY MR. RATNASWAMY:

3 Q I guess to be fair I'm referring to the
4 sentence that ends at the top of 25. It starts at
5 the bottom of 24. And you're talking there about the
6 utilities and also Footnote 24 in Exhibit 1.5.

7 Do you see that?

8 A Yes, the context is I'm commenting on the
9 Staff's proposed modifications to the Company's
10 revenue lag.

11 Q Right.

12 And would it be fair -- I realize this
13 doesn't apply to something in writing, but that you
14 misspoke when you said there are other large electric
15 utilities and the two of them are gas utilities?

16 A Well, Exhibit 1.5 contains both electric
17 and gas utilities.

18 Q Right.

19 A The testimony that you pointed me to was
20 pointing to the electric utilities in that exhibit.

21 Q I see.

22 Okay. So just for the record, as I

1 suppose everything is, the two gas utilities are
2 Oklahoma Natural Gas Company and Atmos?

3 A Those are gas utilities, yes.

4 Q Okay. And of the four utilities that use
5 the accounts receivable turnover analysis method, the
6 gas utilities are two of the four?

7 A Testing my recollection. I know it was
8 only a moment ago. What was the data request?

9 Q If you look at 2.24D, I think that
10 indicates that they -- and 2.24L, I think putting
11 those two together.

12 A Oklahoma Natural and --

13 Q Atmos?

14 A -- Atmos Energy are gas utilities. That's
15 right.

16 Q And they're two of the four that use that
17 method that you identify later on?

18 A Two of the four that I can recall
19 specifically using that method, others may have used
20 that method. I was trying to tell you what I recall
21 without the benefit of the work papers. We don't
22 retain the work papers from all these cases.

1 Q I think in at least that respect I envy
2 you.

3 Is it right that none of the utilities
4 on Exhibit 1.5 is an electric distribution-only
5 utility? And if it helps you can look at Subpart K
6 of the data request response.

7 A I believe the utilities in -- the electric
8 utilities on AG/CUB 1.5 are vertically integrated
9 utilities with a generation function.

10 Q And as to the Arizona Public Service item
11 on that exhibit, that is from a case using a 2005
12 test year; is that right? And if you want to look at
13 Subpart F of the data request response.

14 A Page 2 of AG/CUB Exhibit 1.5 indicates in
15 the heading the test year was 12 months into
16 September 30, 2005.

17 Q Thank you for that correction.

18 And you know what metropolitan areas
19 are served by the utilities in Exhibit 1.5?

20 A I think so. Not all of them, but certainly
21 the general service territories I can speak to in the
22 major cities. Is that what you're after?

1 Q I actually don't know if it was provided to
2 you. I gave a document to one of the AG/CUB
3 attorneys.

4 MS. LUSSON: I do not have that. I saw --
5 heard some references and some document was shown to
6 me about a list of municipalities or something.

7 MR. RATNASWAMY: Right. At this point I'm not
8 playing the market.

9 MS. LUSSON: I don't think Mr. Brosch --
10 (Whereupon, a discussion was had
11 off the record.)

12 BY MR. RATNASWAMY:

13 Q Start over.

14 So I'll represent to you, subject to
15 check -- and I suppose I could show you a screen cap,
16 too -- this is a document from the Website of the
17 United States Census Bureau that ranks metropolitan
18 areas by their size as of July 1st, 2009.

19 And the only reason I'm showing this
20 to you is I want to -- hopefully not at great
21 length -- just go through how these utilities compare
22 with ComEd in terms of the size of the metropolitan

1 areas they serve.

2 If you accept my representation that
3 it's a document from the U.S. Census Bureau,
4 Mr. Brosch, are you comfortable with me using the
5 rankings in there when I ask you questions?

6 A If I grow uncomfortable, I'll let you know.

7 Q Okay. Thank you.

8 I think probably even without looking
9 at that, is it correct that even though we're the
10 second city, we're the third largest metropolitan
11 area in the United States here in Chicago?

12 That one I was hoping you knew without
13 looking.

14 A Looks like you're number three by this
15 ranking.

16 Q Okay.

17 A Are you concerned only with the Chicago
18 part of the Company's service territory? Are you --

19 Q I'm sorry?

20 A You're focused only on the urban part of
21 the Company's service territory --

22 Q Well, this is a ranking of metropolitan

1 areas rather than cities. Do you understand that
2 distinction?

3 A Yeah, I do.

4 Q Okay.

5 A I understand that ComEd serves more than
6 just Chicago.

7 Q Sure.

8 Let me ask you, if you would be
9 willing to accept that, subject to check, without
10 going through the whole spreadsheet, would you agree
11 that none of the electric utilities in Exhibit 1.5
12 serves any of the ten largest metropolitan areas in
13 the United States?

14 A You want me to ignore Atmos serving Dallas?

15 Q My question is limited to electrics.

16 A You want only electric.

17 Let me check a couple and then I
18 perhaps can agree with you.

19 It looks to me like St. Louis and
20 Phoenix are in the top 20, but not the top 10.

21 Q You are quick.

22 A You want only the top 10.

1 Q You are quick.

2 Phoenix is 12 and St. Louis is 18?

3 A Correct.

4 Q Okay. Good.

5 And you mention Atmos, which is a gas

6 utility. They are a gas utility in the Dallas area;

7 is that right?

8 A They serve approximately upwards of half

9 the state of Texas, including the largest cities,

10 Dallas, they serve Austin and a number of second-tier

11 cities.

12 Q But the electric utility there is Oncor; is

13 that right?

14 A That's one of them. CenterPoint is in

15 Houston.

16 Q And as far as Arizona Public Service

17 goes -- I don't know how well you know this -- is it

18 right that they serve about half of Phoenix?

19 A Probably more than half of the population.

20 The Salt River Project is a significant presence in

21 parts of Phoenix.

22 Q Okay. So if I were to show you a service

1 territory map, would that be helpful or you're
2 content with your answer?

3 A I think I'm content with my answer; but if
4 you want to discuss it otherwise, I'd be happy to
5 look at your map.

6 Q Okay. It's my only document in color.

7 And I'll represent it's downloaded
8 from their Website this morning if you click on the
9 link for their service territory -- for their
10 metropolitan service territory. There's also one for
11 the state.

12 So -- and the dark area is the area
13 they don't serve.

14 A I understand that, and I'm not surprised by
15 the shading on the map. I don't know that it
16 necessarily speaks to where the people are --

17 Q Understood.

18 A -- if you're interested in population, as
19 your other question seemed to suggest.

20 Q Right.

21 Well, during spring training would you
22 agree there's a lot of people in Mesa?

1 A Yes, that's where I'd like to be.

2 Q All right. So running through the list on

3 1.5, Hawaiian Electric Company, the biggest

4 metropolitan area they serve is Honolulu; is that

5 right?

6 A About a million people, yeah.

7 Q And Interstate Power, that's Des Moines, in

8 terms of the biggest area they serve?

9 A No, Quad Cities.

10 MidAmerican I think has Des Moines.

11 Q Okay. Ameren you -- actually, we talked

12 about, is St. Louis; right?

13 A And much of Missouri, the eastern half of

14 Missouri.

15 Q Sierra Pacific Power Company is Las Vegas?

16 A No, Northern Nevada, Reno, Carson City.

17 Q Public Service of New Mexico, is their

18 biggest area Albuquerque?

19 A Yes.

20 Q Oklahoma Natural Gas, again, gas. Is it

21 Oklahoma City is their biggest?

22 A Tulsa and Oklahoma City.

1 Q Okay. Atmos we've talked about. And then
2 Southwestern Public Service, is their biggest
3 Amarillo?

4 A It is. Amarillo, Lovett, Panhandle Texas.
5 Actually, only parts of Public.

6 Q Did you investigate or otherwise do you
7 know, which, if any, of these utilities is subject to
8 limits on disconnecting customers in the winter
9 because of cold weather concerns?

10 A I'm virtually certain the gas companies are
11 subject to cold weather disconnection. I don't
12 recall specifically if APS has a summer disconnect
13 prohibition. They may.

14 Q Okay. Are you -- have you ever testified
15 about LIHEAP issues?

16 A Ever is a long time. I don't recall any
17 testimony.

18 Q That's true in your case.

19 You are familiar with the LIHEAP
20 Clearinghouse?

21 A Excuse me?

22 Q Are you familiar with the LIHEAP

1 Clearinghouse?

2 A No.

3 Q Okay. So if I -- maybe this doesn't
4 accomplish much. If I represented to you, subject to
5 check, that of the electrics the only ones that are
6 subject to months where they can't disconnect anyone
7 are the Iowa one, the Missouri one and the New Mexico
8 one, are you willing to accept that, subject to
9 check?

10 MS. LUSSEN: Objection. Relevance and also
11 that's a lot of facts to accept, subject to check.
12 I'm assuming if these are statutory citations then,
13 you know, those may be arguments that could be
14 presented in a brief.

15 JUDGE SAINSBURY: You also have not established
16 the relevance.

17 MR. RATNASWAMY: Oh, sure.

18 BY MR. RATNASWAMY:

19 Q Well, in Mr. Subbakrishna's testimony, does
20 he refer to Mr. Marquez's testimony in relation to
21 ComEd's collection practices?

22 A I'm sorry. Was that a question?

1 Q Yes.

2 Does Mr. Subbakrishna refer to ComEd
3 Witness Marquez on the subject of ComEd's collections
4 practices?

5 A I believe in discovery. I don't recall in
6 the testimony if he did or not. Do you have a place
7 you can point me to?

8 Q Not handy. I didn't know it was going to
9 be an issue.

10 Well, let me ask you this way: Did
11 you read Mr. Marquez's testimony?

12 A Yes.

13 Q Okay. Is it -- do you recall whether he
14 identified one of the reasons for ComEd having older
15 receivables was that ComEd is subject to not being
16 able to disconnect customers during the winter cutoff
17 period?

18 A Well, I knew that before I read
19 Mr. Marquez' testimony as part of my own
20 investigation. That's why I refer to the discovery.
21 There was some questions sent to the Company on that
22 very point.

1 MS. LUSSON: I'm going to object to -- I don't
2 know if you're done with this line of questioning or
3 not. But I'm, again, going to object on relevance.
4 Whether or not the Company has receivables issues
5 associated with -- I think you mentioned LIHEAP --
6 really doesn't go to the issue as to what is properly
7 excluded from the intervals -- the collection day
8 intervals in a lead lag study and the assumptions --
9 the criticisms that Mr. Brosch proffered about the
10 assumptions that Mr. Subbakrishna made.

11 MR. RATNASWAMY: I'm sorry, that is very off
12 base. First, the question has nothing to do with
13 LIHEAP. I was simply going to show him something if
14 he was familiar with it. Second, one of the reasons
15 we are here today is because Mr. Brosch questions why
16 ComEd has the receivables of the different amounts --
17 different aging amounts. One of the reasons ComEd in
18 testimony has given is that it has winter disconnect
19 cutoff limits.

20 This exhibit is supposed to be
21 contrasted with ComEd. I am simply trying to point
22 out that of the -- I think it's seven electric

1 utilities on here, four of them are not comparable in
2 that respect because they do not have winter cutoff
3 limits.

4 JUDGE SAINSOT: You're going to have to -- the
5 objection's overruled, but you're going to have to
6 tie that up, Counsel. It appears now that you're
7 going down a road that will lead somewhere, but you
8 got to get us there.

9 MR. RATNASWAMY: That was the end of the road
10 on that as far as I was concerned. The whole -- this
11 line of cross is simply about whether they're
12 comparable to ComEd and I'm simply trying to show
13 that four of them are not that in that respect.

14 JUDGE SAINSOT: Well, that gets back to the
15 relevance.

16 MR. RATNASWAMY: I mean, your Honor, it is in
17 testimony. Mr. Subbakrishna and Marquez both talk
18 about why ComEd has the receivables of the age that
19 it does. One of the reasons Mr. Marquez gives is
20 this factor.

21 JUDGE SAINSOT: All right. Well, I think you
22 just cleared that up then.

1 MR. RATNASWAMY: Okay. Thank you.

2 BY MR. RATNASWAMY:

3 Q All right. If you look at your direct,

4 Page 32, please, Lines 693 to 699.

5 A Okay.

6 Q There's -- I'm trying to find where the

7 beginning of the sentence is. I'm sorry.

8 Do you see on Line 696 a reference to

9 final accounts being written off 90 days after the

10 final bill is issued?

11 A I see that, yes.

12 Q Okay.

13 A This is a quote from a ComEd response to a

14 data request.

15 Q Right.

16 And at the time that you wrote this

17 did you understand from that data request response or

18 at least at the time did you think 90 days meant

19 90 days after the customer additionally was overdue

20 on paying?

21 A Well, it's taken literally. The response

22 that the Company gave to this data request is that

1 final accounts are written off 90 days after the
2 final bill is issued. I'm not sure I understand your
3 question beyond that.

4 Q Okay. Well, what do you think the final
5 bill is?

6 A What is the final bill?

7 Well, we're talking about where a
8 customer has either moved or service is suspended for
9 nonpayment, at which time the Company would read the
10 meter and issue a final bill and there would be a
11 termination of service to that account and that
12 customer address.

13 Q Okay. I think that's right, and so I'm
14 suffering a disconnect with the testimony. So I just
15 want to clear this up. Maybe it's not what you
16 intended.

17 Let's say the customer gets their --
18 just their normal bill, a customer that's up to date
19 on their bill and they have -- let's say, it's
20 21 days to pay, and they haven't paid, and at some
21 point ComEd starts to work on the collections
22 process. Do you accept that as a hypothetical?

1 A Yes.

2 Q Okay. And I think what you just indicated
3 is the process, and at some point if the person
4 doesn't pay or whatever the other factors are, the
5 account is finaled and then they send what ComEd
6 calls the final bill; is that right?

7 A Well, again, I'm quoting from a response to
8 a data request here. And my understanding in the
9 context of this full analysis of aged accounts
10 receivable that I'm responding to is these are
11 instances where service has been suspended for
12 nonpayment or the customer has moved and a final bill
13 is issued to account for the energy that customer
14 owes that you're going to presumably seek to recover
15 either from the same customer at a new address or
16 through some collection process.

17 Q Right. So that's actually what I'm trying
18 to get at.

19 The 90 days that's referred to there
20 isn't 90 days from when that very first bill became
21 due and owing and the customer hadn't paid, it's
22 90 days from the final bill when the account has been

1 finalled and service has been terminated; right?

2 A Or -- yes, that's what it says, 90 days

3 after the final bill is issued.

4 Q Can you look at your rebuttal at Pages 18

5 to 19, Lines 424 to Line 439, please.

6 A I'm at Page 18. What lines again, please?

7 Q It starts at 424 and it carries over on to

8 439 of the next page.

9 MR. TOWNSEND: It starts at 19 then -- Page 19?

10 JUDGE SAINSOT: Right.

11 MR. RATNASWAMY: Oh, did I say the wrong page

12 numbers? I'm sorry.

13 MR. TOWNSEND: It's okay.

14 MR. RATNASWAMY: You're right. It's 19 to 20.

15 I'm sorry.

16 THE WITNESS: Okay. I think I'm with you. Ask

17 your question and we'll find out.

18 BY MR. RATNASWAMY:

19 Q Well, I thought -- and maybe it's not on

20 those lines. You refer to -- oh, it's a little

21 farther down the page. I'm sorry. You referred to

22 ComEd's Rider UF.

1 Do you see that?

2 A I see at Line 450.

3 Q Okay. And do you -- in general do you know
4 what that is?

5 A Yes.

6 Q Okay. What is that, please?

7 A It's a rider that gives the Company the
8 opportunity to track and fully recover its
9 uncollectible expenses.

10 Q How familiar are you with the rider?

11 A I have read the tariff. I've read some of
12 the testimony. It's a long complicated tariff so it
13 probably depends on what you ask me next.

14 Q Okay. Do you know whether the rider
15 provides for the recovery of any carrying costs by
16 ComEd?

17 A I believe the rider is triggered by a
18 accrual basis accounting for uncollectibles, and I
19 can't imagine why it would include carrying costs.
20 The accrual basis entry is to set up the
21 uncollectibles or in advance of, in anticipation of
22 later write-offs. So I don't know how you would even

1 start to bake that into the calculation. And I don't
2 think it's in there.

3 Q Okay. Thank you.

4 And as far as uncollectibles that are
5 in base rates, do you know whether they recover
6 carrying costs?

7 A Uncollectibles of base rates are an expense
8 item. I'm confused by your question.

9 The only place carrying costs might
10 come into play is if one were to calculate a cash
11 working capital and how -- if it's in rate base that
12 would earn carrying costs. And that's really why all
13 of this is in here. We're talking about cash working
14 capital.

15 Q So as far as uncollectibles, if I call --
16 refer to it as the line item, so to speak, in the
17 operating expenses in the revenue requirement,
18 there's no rate of return on them, is there?

19 A Not on operating expenses, no.

20 Q Okay. Switching subjects to test year
21 matching.

22 Do you have your Data Request Response

1 2.09?

2

3 (Whereupon, there was a change
4 of reporter.)

5 MR. RATNASWAMY: This one I'm going to mark as
6 soon as --

7 THE WITNESS: I have the response, yes.

8 BY MR. RATNASWAMY:

9 Q All right. And to save time, if you were
10 to be asked a question that appeared here -- well --
11 I'm sorry -- did you intend the answers to be
12 correct?

13 A Of course.

14 Q Okay. And is there anything in them over
15 the passage of time that you feel has become
16 incorrect?

17 A Probably not, but let me check the internal
18 reference and see what that was about.

19 I see no need to change the response.

20 MR. RATNASWAMY: Okay. So to save time, I
21 would just like to offer that one into evidence.

22 If you wanted to -- I'm not sure what

1 we've been doing. Have we been doing it at the end?

2 MS. LUSSON: Yes.

3

4 BY MR. RATNASWAMY:

5 Q All right. In your rebuttal on Page 5,
6 Lines 97 to 98, please.

7 A Okay. I'm there.

8 Q The sentence continues on to Line 99, but
9 do you see where you refer updating depreciation and
10 accumulated deferred taxes to the same point in time
11 as the plants and service is updated?

12 A Yes, I see that reference.

13 Q Okay. Would it be okay if from now I said
14 "ADIT" instead of "accumulated deferred taxes"?

15 A That would be just fine.

16 Q You are the witness on behalf of AG/CUB who
17 presents the revenue requirement schedule that pulled
18 together all of the adjustments proposed by AG/CUB's
19 witnesses?

20 A I am. Yes, I've done that twice, for the
21 direct and the rebuttal round. And because it's a
22 compilation, there's an index schedule in the front

1 of each of those indicating who sponsors specific
2 pages within those exhibits; but, yes, I'm the
3 compiler and the overall sponsor.

4 Q So you and -- is it correct that you and
5 Mr. Effron both testify on the subject of pro forma
6 capital additions?

7 A I believe so. If by "capital" you mean
8 plant in service and the subject of updating
9 depreciation and ADIT, yes. He performs the
10 mechanics of the adjustments that are in the revenue
11 requirement calculation and I talk to the -- I guess,
12 I call it the policy question of how and where you do
13 this.

14 Q Okay. Is it correct that his proposal
15 limits pro forma as capital additions as proposed by
16 ComEd to March 31st and also updates the depreciation
17 reserve and ADIT figures for a test year plant as of
18 that same date, March 31st?

19 A Of 2011?

20 Q Of 2011, excuse me.

21 A I believe that's correct. Yes, he has
22 balanced updating proposal to a matched point in

1 time.

2 Q All right. So does his proposal -- is his
3 proposal consistent with what you talked about on
4 Lines 97 to 99 of your rebuttal?

5 A I think so, yes.

6 Q And, in general, is his -- his proposal is
7 just described consistent with the test year matching
8 principles that you discuss in your testimony?

9 A It's probably more liberal than in many
10 states where a more rigorous matching is required of
11 the various elements of the income statement, but
12 it's certainly an effort to at least match up the
13 defined investment in rate base to a common point in
14 time.

15 Q Okay. So my question was, is his proposal
16 consistent with test year matching principles as
17 described in your testimony? Is it?

18 A Well, certainly with respect to accumulated
19 depreciation, ADIT and plant. He has a matched
20 presentation of the principal elements of net
21 investment and rate base. It may be possible to more
22 rigorously match other elements of the revenue

1 requirement. And I'm not sure -- you can ask him --
2 whether he believes he's done that in his treatment,
3 for example, of revenues.

4 Q Okay. If Mr. Effron had chosen a different
5 date, whether later or sooner, as long as he used the
6 same date for all three elements of his
7 calculation -- the capital additions, the
8 depreciation reserve and ADIT figures -- would that
9 be consistent to the same degree as his proposal as
10 of March 31st cutoffs?

11 A There are some issues that come to bear
12 here. I spoke of matching beyond these three primary
13 elements of rate base. And the farther you go from
14 the basic test year, the more you risk damaging the
15 balancing and matching with the other elements in the
16 revenue requirement.

17 There would also be concerns raised as
18 to known and measurable quantifiability and
19 verification of the numbers.

20 Q Okay. If I refer to a capital project that
21 is part of a utility system as being in service in
22 the accounting sense, does that -- does that

1 terminology -- do you know what I mean by that
2 terminology?

3 A I think I do.

4 Q Okay. From the point at which a project is
5 in service -- the accounts put in service, so to
6 speak -- does it start to accrue depreciation?

7 A Normally it does. The typical practice --
8 I'm not familiar with ComEd's accounting procedures,
9 but the typical practice is in a next month after in
10 service, there would be a commencement of
11 depreciation accruals.

12 In some utilities there's a longer
13 delay to a next quarter. And in one instance I'm
14 aware of, even the next year before those accruals
15 commence.

16 Q All right. So let me ask you this
17 question -- although, based on what you just said, I
18 understand you might have to qualify your answer --
19 if -- let's assume Mr. Propos- -- Mr. Effron's
20 proposal is approved by the Commission and to the
21 plant and the ADIT and the depreciation reserve are
22 all based on numbers as of March 31st.

1 Are you okay with that hypothetical?

2 A I understand it, yes.

3 Q Okay. Now, suppose ComEd puts a capital
4 project into service after March 31st. Again, you
5 would agree -- assuming that's what ComEd does --
6 that it starts to accrue depreciation?

7 A If I follow your hypothetical, a capital
8 addition after the cutoff used by Mr. Effron would
9 imply the commencement of some incremental
10 depreciation expense on that capital addition that
11 was not explicitly recognized in the revenue
12 requirement.

13 Q Okay.

14 A On the other hand, if there were
15 retirements of existing plant, it would go the other
16 way. And as you move through time, all the numbers
17 tend to change.

18 Q Understood.

19 So if I may add to the hypothetical,
20 supposing someday ComEd files another rate case, say
21 it's -- I don't know -- two, three years from now,
22 will the net plant -- the test year net plant number

1 that's used in rate base in terms of the contribution
2 of this project to that number be the depreciated
3 amount of that plant?

4 A Let me see if I understand your question.

5 If we were to isolate one plant item
6 added after the cutoff in this case and seek an
7 answer to the question, what value is included in
8 rate base in the next case, assuming that piece of
9 plant had not been prematurely retired between now
10 and the next case, it would still be in service and
11 be embedded in the plant in service accounts at that
12 time.

13 There would be a continual accrual of
14 depreciation expense on all of the existing plant.
15 And at or soon after the in-service date, incremental
16 depreciation on your hypothetical addition. Those
17 balances would roll forward in time and the entirety
18 of plant in service and accumulated depreciation and
19 ADIT in that next rate case would be considered for
20 rate base inclusion.

21 Q Thank you.

22 Would you look at the footnote that

1 begins on Page 11 of your rebuttal, please.

2 A Footnote 3?

3 Q Right.

4 Do you have the data request that you
5 referred to there -- data request response? Excuse
6 me.

7 A I don't know. I can dig through my bag and
8 see.

9 Q Well, you might not need it. This is
10 really just intended as a clarification question.

11 Is it correct that in the first
12 sentence of the footnote, you're talking about one of
13 the things ComEd said in the data request response,
14 but the second sentence of the footnote is you
15 talking, so to speak, it's not what ComEd was saying;
16 is that right?

17 A We're pretty sure that ComEd has not
18 admitted to distortive updating of plant additions
19 yet.

20 Q All right. On your direct on Page 14,
21 Line 316, please.

22 This is another one that I think is

1 cleared up in discovery.

2 Do you see where you refer to 2010

3 illustrative on Line 316?

4 A I see a 2011 illustrative and a 2010

5 estimated. I'm not sure what you're asking me about.

6 Q I'm just saying, do you see where it says

7 "2011 illustrative"?

8 Did I say 2010?

9 If I did, I'm sorry.

10 A You did.

11 Q Okay. I'm sorry.

12 A I'm with you.

13 Q Okay. And do you recall -- I'm sorry.

14 I'll just cut it short.

15 Is it correct that 2010 -- sorry --

16 2011 illustrative in both Lines 314 and 316 is the

17 average of the year-end 2010 and 2011 numbers, it is

18 not the year-end 2011 number?

19 A I don't recall specifically. I think I'd

20 have to find the documents referenced in Footnote 5.

21 Q Okay. Well, do you have your response --

22 or did you want to look it up?

1 A I was hoping it might be easy, but let's
2 try your way.

3 My response...?

4 Q Okay. Your response to AG/CUB 2.3, ComEd's
5 Data Request to AG/CUB 2.13.

6 A The AG/CUB response to ComEd's Data Request
7 2.03?

8 Q 13, I'm sorry. 2.13.

9 A 2.13.

10 I see. And the response to Part A, a
11 quote that the amounts provided in ComEd's response
12 to AG 3.02F where it says, The amount shown in the
13 2011 E column were annual average amounts that were
14 not prepared to support a rate request, RR, not on a
15 basis that conforms with ICC standard filing
16 requirements.

17 I'm not sure if that's a literal quote
18 or not.

19 Q It wouldn't surprise me. There was a lot
20 of data requests. There's probably typos.

21 Does that refresh your recollection
22 that the 2011 illustrative number is an average

1 number for 2011, not a year-end number?

2 A I believe that's what this says, yes.

3 Q Okay. Thank you.

4 Okay. We can move on to the subject
5 of CWIP.

6 Is it correct ComEd proposes to
7 include in rate base an amount for CWIP, C-W-I-P,
8 that is not accruing AFUDC?

9 A I believe that's correct. A proposed
10 inclusion rate base of an allowance for short-term
11 CWIP that does not accrue AFUDC distinguished as not
12 specific projects that find their way into rate base
13 through these pro forma plant additions, but instead
14 some generic allowance for ongoing short-term CWIP.

15 Q I kind of like saying "short-term CWIP"
16 instead of saying "CWIP not accruing AFUDC" because
17 it's easier.

18 So if I use "short-term CWIP" from
19 now, will you understand that that's what I mean?

20 A Yes.

21 Q Okay. Thank you.

22 And you propose to disallow that

1 amount from rate base; is that correct?

2 A To not include short-term CWIP and rate
3 base, that's in my proposal.

4 Q Okay. In your direct -- could you look at
5 your direct on Page 16, please.

6 A Okay.

7 Q On Lines 365 to 367 --

8 A Page 17?

9 Q 16, I believe.

10 A I might have a pagination thing going here,
11 but I see the lines. Let's work with that.

12 Q I'm sorry.

13 Well, those aren't the right lines,
14 though. I'm sorry.

15 Do you recall saying -- I might have
16 been hunting for it -- quote, CWIP investment is
17 generally not included in rate base, but instead is
18 allowed to earn a capitalized return in the form of
19 allowance for funds used during construction AFUDC?

20 A I see that at the top of Page 17 of my
21 testimony, yes.

22 MS. LUSSON: Line 365.

1 THE WITNESS: You were close.

2 MR. RATNASWAMY: Okay. This version is off.

3 Interesting.

4 BY MR. RATNASWAMY:

5 Q In that quote, which I can't seem to find,
6 when you refer to CWIP generally not being included
7 in rate base, you're referring to CWIP that does
8 accrue AFUDC; isn't that right?

9 A Well, I guess I'm -- what I had in mind was
10 a couple of things: First, that most state
11 commissions do not include CWIP and rate base at all
12 because it's not in service, it's not used and useful
13 in serving customers; and, secondly, that the
14 majority of CWIP investment dollars tend to be in
15 larger projects or projects that take more than a
16 month to complete and that are allowed an AFUDC
17 return because of those facts.

18 Q All right. So as to CWIP -- as to
19 short-term CWIP, do you know whether the Illinois
20 Commerce Commission generally includes -- allows it
21 to be included in rate base?

22 A I know that the Commission has authority to

1 include CWIP if it chooses to. And I know that in
2 the last ComEd rate case, a CWIP allowance was
3 included in rate base.

4 Beyond that, I don't recall with what
5 I've seen.

6 Q Okay. What is your definition of --
7 well -- I'm sorry. Let me back up for a second.

8 So one of the reasons you give for
9 your position that CWIP -- short-term CWIP should not
10 be in rate base is that it is not used and useful; is
11 that right?

12 A By definition, that's correct.

13 Q Okay. What's the source of that
14 definition?

15 A Well, the FERC uniform system of accounts
16 requires valid recorded and construction work in
17 progress to be in progress. As we discussed
18 previously, when that construction is completed, the
19 work is done, the investment balance moves from the
20 CWIP account to completed construction, not
21 classified or plant in service, depending on the
22 accounting procedures employed.

1 Q Would your opinion change if there were
2 Illinois Commerce Commission decisions brought to
3 your attention that hold that CWIP meets the
4 definition of used and useful as used in the Illinois
5 Public Utilities Act?

6 A Were you asking about my understanding of
7 what's used and useful?

8 Q Yes.

9 A I'm not sure you'll change my mind, but I
10 certainly would understand that others may see that
11 differently.

12 Q Okay. Do you have any -- I'm sorry.

13 Do the ICC's rule allow the inclusion
14 in rate base of property held for future use?

15 A I'm not sure.

16 Q Okay. Set that aside for a moment.

17 Is property held for future use used
18 and useful in your definition?

19 A Typically not, at least not currently or it
20 would be in plant in service. I mean, the plant --
21 or the account title really kind of defines the
22 assets that are in there, assets being held because

1 they may be used and useful and includable in plant
2 in the future, but are not typically now.

3 Q Speaking of the future, in a future test
4 year case, is all of the plant included in rate base
5 used and useful using your definition of used and
6 useful?

7 A You're asking me if we were looking at a
8 test period presentation where a future year is used
9 with projected amounts for all the elements of rate
10 base and all of the elements of operating income?

11 Q Yes.

12 A Let me make sure I understand your question
13 then.

14 In the forecasting, underlying the
15 numbers that are presented for plant in service
16 balances, the budget being used is a budget that
17 anticipates typically that the plant will be
18 completed and in service and used and useful at the
19 projected time in the projected test year.

20 Q Okay. So the way you've used the term
21 "used and useful" in your testimony, that plant, at
22 least some of it, is not used and useful yet, right?

1 A My testimony doesn't talk about future test
2 years. Maybe with a citation I can get back on the
3 track with you.

4 Q Do you have a different definition of used
5 and useful depending on whether the case involves a
6 historical or a future test year?

7 A I don't have a different definition, but
8 we're talking about different periods of time. So
9 the distinction is, are we, in a future test year,
10 budgeting for future events where there's some
11 uncertainty? If we're budgeting a plant in service
12 dollar amount in a future test year, part of that
13 budget is the assumption that those dollars of plant
14 will, in fact, be in service within that future
15 period.

16 Q But at the time the Utility Commission
17 approves the rates that go into effect, some of that
18 plant won't be used and useful yet as defined -- as
19 you have used that term, right?

20 MS. LUSSON: Well, I'm going to object at this
21 point. Mr. Brosch doesn't talk about used and useful
22 in this plant in terms of the test year in this

1 portion of his testimony. He's talking about CWIP,
2 plant construction work in progress, which is not
3 complete, and makes a conclusion about whether or not
4 it's appropriate to put it in rate base.

5 So I'm not sure -- we're kind of going
6 with an apples-to-oranges analogy here about -- you
7 know, because the test year rules for future test
8 year, of course, envision that you would include
9 plant in rate base.

10 I guess I'm objecting to -- the
11 analogy is not relevant.

12 JUDGE SAINSOT: Yeah, I have to agree. I mean,
13 I think what Mr. Brosch is talking about is a matter
14 of third grade English in that you have past tense,
15 future tense and presence tense. And historical test
16 years are past tense and future test years are future
17 tense.

18 So let's move on.

19 MR. RATNASWAMY: All right. Your Honor, I
20 would like to be heard on that since I was not, which
21 is I'm trying to make a point that the definition of
22 used and useful that he has used is inconsistent with

1 different test year approaches.

2 JUDGE SAINSOT: Right. And I just addressed
3 that. It's a matter of third grade English. Move
4 on -- or maybe fourth.

5 BY MR. RATNASWAMY:

6 Q In Docket 09-0263 you listed a large number
7 of dockets in previous dockets in which you had
8 testified. I'm going to ask you about one of them.
9 I don't know if you'll remember it.

10 A Are you working from -- just so I can try
11 to keep up, are you working from my qualifications
12 testimony listing?

13 Q Well, I didn't see you in this case present
14 a list of your previous testimony. Where I found it
15 was in Docket 09, dash, 0263.

16 A Go ahead.

17 Q Okay.

18 A We'll see if I can remember.

19 MS. LUSSON: Actually, Mr. Ratnaswamy, I think
20 it's 1.2 -- Exhibit 1.2, six pages.

21 THE WITNESS: Now that I've asked you, I can't
22 find my copy anyway.

1 So go ahead and ask your question.

2

3 BY MR. RATNASWAMY:

4 Q All right. I'm trying to find it,
5 actually.

6 Here it is.

7 So on Page 2 of 6 -- I'm sorry. You
8 don't have a copy of your --

9 A Unfortunately, no.

10 Q Okay.

11 MR. RATNASWAMY: May I approach?

12 BY MR. RATNASWAMY:

13 Q Okay. So sort of near the bottom, do you
14 see that you testified for the Office of Public
15 Counsel in Docket -- in Illinois in Docket 9D, dash,
16 0007 in -- well, do you see that?

17 A I see that reference. I vaguely recall the
18 case.

19 Q Okay. Would it refresh your recollection
20 if I suggested to you that you testified for OPC on
21 the subject of CWIP in that case?

22 A I don't recall that.

1 Q Okay. I understand that you're aware of it
2 now, were you aware of Section, dash, 9214 of the
3 Public Utilities Act at the time you prepared your
4 direct testimony?

5 A I don't recall the section number
6 reference.

7 What are we talking about?

8 MS. LUSSON: Are you talking about the
9 reference that Ms. Houtsma makes, the CWIP statute?

10 MR. RATNASWAMY: Well, he references it in his
11 rebuttal and he also -- it's also the subject of Data
12 Request 2.16.

13 THE WITNESS: You're asking me when I became
14 aware of the --

15 BY MR. RATNASWAMY:

16 Q No.

17 I really want to know, at the time
18 that you were writing your direct testimony, did you
19 know of that section?

20 A I think so. I think I recall discussing it
21 with AG counsel.

22 Q If in a prior Commonwealth Edison Company

1 rate case -- let's call it just a hypothetical -- if
2 in a prior Commonwealth Company rate case a witness
3 for CUB had testified in support of the inclusion of
4 short-term CWIP in ComEd's rate base, would that
5 affect your opinion?

6 A Not in and of itself. I would be
7 interested in whether there were different facts or
8 circumstances, whether the support was over in
9 reacting to opposition to inclusion versus
10 passive support. A lot of things happen almost
11 without attention.

12 Q To what extent, if any, in preparing your
13 testimony did you review positions taken by -- not
14 you, but other people testifying for AG or CUB in
15 past ComEd rate cases?

16 A I guess I'd say I had a general awareness
17 of testimony I'd read from previous witnesses in
18 other rate cases, but I don't recall issue by issue
19 going back to see what someone had said in multiple
20 prior cases one way or the other.

21 MR. RATNASWAMY: All right. Thank you,
22 Mr. Brosch.

1 JUDGE DOLAN: Any redirect?

2 MS. LUSSON: Just a couple of questions.

3 REDIRECT EXAMINATION

4 BY

5 MS. LUSSON:

6 Q With respect to your Exhibit 1.5,
7 Mr. Brosch, which is the tabulation of revenue lag
8 days and the comparison with other major energy
9 utility with respect to comparing ComEd's revenue lag
10 day number, does it matter to you that two of the
11 four utilities listed in that were gas utilities in
12 terms of the purposes of this document?

13 A Not particularly, no. I think what was of
14 interest is other large utilities practicing cycle
15 billing, what experience is there when the revenue
16 lag has been measured for ratemaking purposes.

17 And the amounts shown in the exhibit
18 are the asserted revenue lag values that the Utility
19 filed in those cases.

20 Q And does the -- there was some discussion
21 with Mr. Ratnaswamy about the size of the metro areas
22 of some of these utilities and the comparison with

1 the ComEd service territory.

2 Do you recall that --

3 A I do recall that.

4 Q -- discussion?

5 Does the size of the metro areas of
6 these utilities as identified on the census exhibit
7 impact your conclusion that the Company's estimate of
8 their revenue lag, at least the initial direct number
9 of 57.32, was inappropriate?

10 A No, it doesn't. I've seen in my experience
11 no correlation between revenue lag and size of metro
12 areas served.

13 And if you look at Exhibit 1.5 and
14 focus on the two largest electric urban areas served,
15 the Arizona Public Service serving Phoenix and the
16 Ameren UE serving St. Louis and you see that the
17 revenue lags asserted by the utilities in those
18 states are actually lower than some of the others in
19 the exhibit. I don't think there's correlation.

20 Q Mr. Ratnaswamy also asked you -- or
21 discussed the age of accounts of the presence of
22 accounts receivables that ComEd has of a certain age.

1 Do you recall that discussion?

2 A Yes.

3 In the context of final bills?

4 Q Yes.

5 Does the existence of the -- the
6 situation that Mr. Ratnaswamy described change at all
7 your conclusions about the assumptions used by
8 Mr. Subbakrishna for purposes of estimating revenue
9 lag days?

10 A No. The fundamental problem with the
11 analysis done by the Company in this area is the
12 heavy weighting assigned to very old receivables with
13 no discounting for the fact that many of the dollars
14 in those aged pools will ultimately prove to be
15 uncollectible, whether they're finaled accounts,
16 whether they are just extremely old accounts, the
17 Company's own analysis of uncollectibles in support
18 of the accruals of uncollectibles shows an
19 expectation that many of those dollars will
20 ultimately not be collected at all and shouldn't be
21 used to influence the calculation of the revenue
22 collection lag.

1 Q And with respect to the discussion about
2 CWIP -- and you have had a chance to review the
3 section of the Act that's -- in the Illinois Public
4 Utilities Act about when and under what circumstances
5 CWIP is allowed in rate base; is that right?

6 A Certainly when the testimony was prepared,
7 I was familiar with it.

8 Q And does Ms. Houtsma's -- I'll get that
9 pronunciation down at some point -- reference to
10 Section -- that section of the Act change at all your
11 conclusion that you arrived at in your direct
12 testimony and defended in your rebuttal testimony?

13 A No. I understand that Act to be
14 permissive. My testimony addresses the reasons why
15 short-term CWIP should not be included in rate base.

16 Q And with respect to ComEd in
17 Cross-Exhibit 18, apparently there's a -- a reference
18 to Footnote 2 at Page 8 of AG/CUB Exhibit 1.0.

19 And you've indicated that that is the
20 reference to an incorrect footnote in your testimony.

21 Do you know exactly sitting here
22 what -- if there is another footnote in your

1 testimony that that referenced?

2 MR. RATNASWAMY: Did he say "incorrect"? I did
3 not hear that.

4 MS. LUSSON: Oh, perhaps I misheard.

5 THE WITNESS: I think -- let me try to clarify.
6 I think when I look at the response to ComEd's
7 question AG/CUB 2.09, I saw the reference there to
8 Footnote 2. When I looked at Footnote 2, there's
9 this extended line at the end of the footnote and I
10 think that at one time I had in mind a reference to
11 the Ameren rate order where the Commission had a
12 different treatment in -- a treatment that updated
13 the depreciation reserve to coincide with that off
14 date for plant in service.

15 I was trying to recall if this
16 reference to ICC orders and other documents pointing
17 to this footnote had omitted the reference to the
18 Ameren order. That was why I paused.

19 BY MS. LUSSON:

20 Q Okay.

21 MS. LUSSON: I have no further redirect.

22 JUDGE SAINSOT: Any recross?

1 MR. RATNASWAMY: No, sir.

2 JUDGE DOLAN: Okay. All right.

3 MR. RATNASWAMY: I do move the exhibit of ComEd

4 Cross-Exhibit 18.

5 MS. LUSSON: No objection.

6 JUDGE DOLAN: All right. Then ComEd

7 Cross-Exhibit 18 will be entered into record.

8 (Whereupon, ComEd Cross-Exhibit

9 No. 18 was admitted into

10 evidence.)

11 MR. BERNET: Your Honor, I have one discovery

12 issue I'd like to put on the record. It relates to

13 the REACT issue that Judge Sainsot discussed last

14 Friday. She required that ComEd produce certain

15 information related to extra-high-voltage

16 customers -- extra-large-voltage customers that were

17 taking in service under ComEd's Rider NS. She

18 required that ComEd produce certain information to

19 REACT. It's my understanding that that request was

20 complied with yesterday.

21 MR. TOWNSEND: Actually, we've been working

22 with ComEd to try to come up with that response. We

1 did receive a response from ComEd last night, but I'm
2 surprised to hear that ComEd today is suggesting that
3 that's a complete response. We have had
4 conversations with them about specific additional
5 categories of information that we understood that
6 they were going to be producing to the Commission and
7 we haven't heard back with regards to those
8 categories of information. So...

9 MR. BERNET: Well, I would just say that my
10 understanding is that we've provided all the
11 information that's available. We have not provided
12 it to the ALJs. We can provide it to the ALJs, but
13 it's our understanding that the ALJs were not
14 interested in getting discovery responses.

15 JUDGE DOLAN: There is no dispute, correct?

16 MR. TOWNSEND: Again, your Honor, we can walk
17 through the different categories of information that
18 we have received and we haven't received. We
19 actually have our expert witness who will be coming
20 on the stand in a matter of minutes here who used to
21 work at ComEd and is familiar with the types of
22 documents that are produced associated with the

1 Rider NS service and he can explain to you what
2 information we have not yet received from ComEd, but
3 that we should receive within the scope of the
4 direction that Judge Sainsot gave to the Company.

5 MR. BERNET: Yeah, we would totally object to
6 that as additional direct testimony.

7 MR. TOWNSEND: Again, ComEd is right now
8 claiming that they're complying with a directive to
9 provide all documents associated with the Rider NS
10 build-outs. We have someone who's able to testify
11 that there are categories of information that have
12 not been provided in response to that directive.

13 MR. BERNET: You know, I guess there's still
14 conversations going on. That's inconsistent with the
15 information that I have; but to the extent that
16 counsel believes we haven't responded, they can file
17 another motion to compel.

18 MR. TOWNSEND: You've already ruled on the
19 motion to compel. The question is are they complying
20 with the motion to compel -- the ruling with regards
21 to the motion to compel.

22 JUDGE DOLAN: Okay. Well, in an effort to not

1 belabor the point, I guess, is what you're saying is
2 that they -- you're still working with them trying to
3 get it --

4 MR. TOWNSEND: Yeah, I -- again, I haven't been
5 working with Mr. Bernet. Mr. Bernstein apparently is
6 not in the room. He's the counsel who I've been
7 interacting with. There was a specific request at
8 the conclusion of hearings yesterday for a specific
9 document or type of document with regards to a
10 specific customer, for example, that ComEd said that
11 they would endeavor to provide to us. That's not
12 there.

13 There are, again, different categories
14 of information. And we would ask that our witness be
15 allowed to provide testimony with regards to the data
16 request response or the information that ComEd
17 provided just last night to us in response to your
18 ruling. I mean, if -- otherwise we can't have a
19 complete record here.

20 JUDGE DOLAN: Well, let me ask you this: I
21 mean, are you prepared to put your witness on if you
22 don't have this complete information?

1 I mean, that's --

2 MR. TOWNSEND: Yeah, we will put our witness
3 on -- with your indulgence, your Honor, we'll put our
4 witness on. He'll talk to the data request response.
5 We'll explain what information we have received in a
6 general matter, what information we're missing and
7 he'll also be able to draw inferences from the
8 information that we have received and apply it to the
9 testimony that he's provided to you so that we've got
10 a complete record.

11 MR. BERNET: Your Honor, we would object. I
12 mean, I don't know when Mr. Terhune was employed by
13 the Company, but he's not currently employed by the
14 Company. There's no reason to have him get on the
15 stand and give live testimony on this issue,
16 particularly if Mr. Townsend believes he's still
17 working with Mr. Bernstein. My understanding is that
18 we've provided everything that is available.

19 MR. TOWNSEND: That's simply -- I mean, we know
20 otherwise. So --

21 MR. BERNET: Why don't I make this suggestion:
22 Why don't we have Mr. Bernstein come over and maybe

1 we can resolve this.

2 JUDGE DOLAN: Yeah, I was just going to say at
3 this point -- I think our next witness is supposed to
4 be Mr. Efron anyway. So we're already a little
5 behind. So we need to get moving, but we can address
6 this when Mr. Bernstein gets here.

7 How does that sound?

8 MR. TOWNSEND: Great. Thank you, your Honor.

9 MR. BERNET: Thank you.

10 (Witness sworn.)

11 DAVID J. EFFRON,
12 called as a witness herein, having been first duly
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY

16 MR. BOROVIK:

17 Q Would you please state your name for the
18 record and spell your last name.

19 A Yes.

20 My name is David J. Efron,
21 E-f-f-r-o-n.

22 Q By whom are you employed?

1 A I'm self-employed, doing business as
2 Berkshire Consulting Services.

3 Q You have before you two sets of documents,
4 one of these documents consists of a cover page,
5 table of contents and 33 pages of text in question
6 and answer form and 18 pages of schedules, which have
7 been marked AG Exhibit 2.0, AG -- and AG Exhibit 2.1
8 respectfully?

9 A Yes.

10 Q I'm sorry. AG/CUB, if I said "AG."
11 All those exhibits are AG/CUB --

12 A Yes.

13 Q -- exhibits, I apologize.

14 The other document consists of a cover
15 page, 20 pages of text in question and answer form
16 and 18 pages of schedules which have been marked
17 AG/CUB Exhibit 8.0 and AG/CUB Exhibit 8.1
18 respectfully; is that correct?

19 A Yes.

20 Q Were these documents prepared by you and
21 under your direction?

22 A Yes, they were.

1 Q Do these documents constitute your direct
2 and rebuttal testimony in this proceeding?

3 A Yes.

4 Q Are there any changes you would like to
5 make to these documents?

6 A I have one change. It's in AG/CUB
7 Exhibit 2.0.

8 JUDGE SAINSOT: Can we have the documents --

9 MR. BOROVIK: Sure.

10 JUDGE SAINSOT: -- and we could just mark
11 them --

12 MR. BOROVIK: Do you want me to mark the
13 correction -- there's only one -- if I give them to
14 you or --

15 JUDGE SAINSOT: Whatever works for you, works
16 for us.

17 THE WITNESS: I have one change. It's on
18 AG/CUB Exhibit 2.0, Page 23 on Line 516, the number
19 at the end of the line should be 18,665,000. So it
20 would be -- 791, the middle three digits there,
21 should be changed to 665, and that is consistent with
22 the referenced schedule.

1 That's the only change I have.

2

3 BY MR. BOROVIK:

4 Q And, Mr. Effron, if I were to ask you these
5 same questions today, would your answers be the same?

6 A Yes, they would.

7 MR. BOROVIK: AG/CUB now submits AG/CUB
8 Exhibit 2.1, the direct testimony of David Effron,
9 AG/CUB Exhibit 2.1, corresponding schedules, AG/CUB
10 Exhibit 8.0, the rebuttal testimony of David Effron,
11 and AG/CUB Exhibit 8.1, the corresponding schedules.

12 JUDGE DOLAN: Any objections?

13 MR. RATNASWAMY: No, sir.

14 MR. BOROVIK: Your Honor, at this time we
15 tender the witness, Mr. Effron, for cross-examination
16 in this proceeding.

17 JUDGE DOLAN: Let's get the exhibits into the
18 record first.

19 MR. BOROVIK: I'm sorry.

20 JUDGE DOLAN: Okay. That's all right.

21 AG/CUB Exhibit 2.0 along with AG/CUB
22 Exhibit 2.1 and the accompanying schedules and AG/CUB

1 Exhibit 8.0 along with AG/CUB Exhibit 8.1 will be
2 admitted into the record. Okay. Thank you.

3 (Whereupon, AG/CUB Exhibit
4 Nos. 2.0, 2.1, 8.0 and 8.1 were
5 admitted into evidence.)

6 MR. BOROVIK: At this time, your Honors, I
7 tender the witness, Mr. Effron, for
8 cross-examination.

9 JUDGE DOLAN: Mr. Ratnaswamy.

10 CROSS-EXAMINATION

11 BY

12 MR. RATNASWAMY:

13 Q Good afternoon.

14 In both your direct and rebuttal, is
15 it correct that you take the position that the pro
16 forma capital additions to be included in rate base
17 should cut off as of March 31st, 2011?

18 A Yes, cut off and be trued-up to actuals.

19 Q Well -- okay. Let me just put that in two
20 pieces.

21 There's a true-up piece -- and I
22 understand you're saying something about that -- I'm

1 just not sure what the date is.

2 The cutoff date is March 31st, 2011?

3 A Yes.

4 Q And in your rebuttal on Page 2, I'm going
5 to -- do you see -- if you could look at Lines 37 to
6 43 -- do you see that?

7 A Yes, I do.

8 Q Let me paraphrase, tell me if this is
9 correct: Is it correct that the grounds for your
10 proposal in brief are that the extent to which the
11 forecasted capital additions will exceed changes in
12 depreciation reserve in ADIT for a test year plant is
13 not known and measurable?

14 A That's correct.

15 Q Okay. Would it be correct to say to make
16 that calculation you basically need to know three
17 numbers, you need to have a known and measurable
18 plant number, a known and measurable appreciation
19 reserve number and a known and measurable ADIT
20 number?

21 A I would say that's a reasonable
22 description.

1 Q Okay. Now, have you reviewed all of the
2 material -- by which I mean, testimony attachments,
3 work papers, data request responses -- that ComEd has
4 supplied in this case in support of their pro forma
5 capital addition expected to go in service in the
6 second quarter of 2011?

7 A I -- have I reviewed all of it? I've
8 reviewed a lot. I probably -- it would be an
9 exaggeration to say I reviewed in detail every single
10 number and all of the information that ComEd
11 submitted because there was quite a bit of it.

12 Q Okay. So of what I've called the -- well,
13 let me ask you a hypothetical -- and I understand
14 it's not your view -- but if the Commission were to
15 find that the capital additions through June 30th of
16 2011 were known and measurable, if they were to find
17 that, would it be your position that it would be
18 appropriate to approve the capital additions as of
19 that date if they also used the depreciation reserve
20 and ADIT numbers for that date and they were also
21 known and measurable?

22 A If you're asking me should the cutoff date

1 be the same for all three components of rate base, I
2 would say "yes."

3 Q Okay. And if hypothetically there were
4 known and measurable numbers for all three of those
5 things as of June 30th, that would be appropriate,
6 wouldn't it?

7 A It wouldn't be inappropriate for any rounds
8 that I cited in my testimony.

9 Q Thank you.

10 Could we move to the subject of repair
11 allowances, please.

12 So, in particular, if you could look
13 at your direct, Page 28, Line 632.

14 A I have that.

15 Q You refer there to an IRS revenue procedure
16 2009, dash, 39.

17 Do you see that?

18 A Yes.

19 Q Okay. And what is an IRS revenue
20 procedure?

21 A It's not an official rule or regulation.
22 It's a statement as to how a certain item might be

1 treated for determining income tax liability.

2 Q I'm sorry. I just missed a couple words.

3 A It's a statement of how a given item might
4 be treated for the purpose of determining taxpayer's
5 liability -- tax liability.

6 Q Okay. And have you read that revenue
7 procedure?

8 A At some point I did, yes. Not yesterday.

9 Q All right. Without having it in front of
10 you, do you recall whether it modifies IRS Revenue
11 Procedure 2008, dash, 52?

12 A Without having it in front of me, I don't
13 recall that.

14 Q I'm not planning on marking a government
15 document.

16 Okay. I literally just plan to ask
17 you about the first sentence of it.

18 Do you see the reference to IRS
19 Revenue Procedure 2008, dash, 52?

20 A I see that, yes.

21 Q Okay. So this 2009, dash, 39 modified
22 2008, dash, 352 -- I'm sorry -- 52?

1 A It amplifies, clarifies and modifies
2 Revenue Procedure 2008, dash, 52.

3 Q Okay. Have you read that revenue
4 procedure?

5 A I don't recall. I might have.

6 Q Okay. In your direct on Page 28, Lines 636
7 to 638 --

8 MR. BOROVIK: I'm sorry. What page was it on?

9 MR. RATNASWAMY: Page 28.

10 BY MR. RATNASWAMY:

11 Q -- you refer to the IRS's consent to a
12 change in recounting related to the repair allowances
13 as being automatic.

14 Do you see that?

15 A Yes.

16 Q Would you agree that a condition of the IRS
17 giving that automatic consent --

18 (Coughing.)

19 BY MR. RATNASWAMY:

20 Q I'll start over. I'm not sure if you
21 heard.

22 Would you --

1 (Coughing.)

2 MR. RATNASWAMY: Not from both sides, come on.

3 BY MR. RATNASWAMY:

4 Q Would you agree that a condition of that
5 consent is that the Utility agrees to the change
6 being subject to audit?

7 A I don't have it in front of me as I sit
8 here, but I think it would be subject to audit
9 whether the Utility agreed with it or not.

10 Q Okay. Have any of the utilities you
11 mentioned in relation to this repair allowance issue
12 been audited for the tax year in which they -- for
13 the tax year in which they made that change?

14 A I don't know.

15 Q Okay. Given that it's quite recent,
16 wouldn't it be natural to think for a big company if
17 they probably haven't been audited yet?

18 A I think I said I don't know.

19 Q In your direct at Page 29, Lines 657 to
20 669, you refer to a letter from EEI counsel to the
21 IRS.

22 Do you see that?

1 A Yes.

2 Q Okay. Do you have a copy of that letter?

3 A Let me check.

4 I don't think I do, but I'll look.

5 MR. BOROVIK: Does counsel have a copy of it?

6 MR. RATNASWAMY: Yeah.

7 MR. BOROVIK: Thanks.

8 THE WITNESS: I don't think I do have that --

9 MR. RATNASWAMY: We'll mark it --

10 THE WITNESS: -- with me.

11 MR. RATNASWAMY: -- then as ComEd Exhibit 19.

12 (Whereupon, ComEd Cross-Exhibit

13 No. 19 was marked for

14 identification, as of this

15 date.)

16 JUDGE SAINSOT: Is this a cross-exhibit?

17 MR. RATNASWAMY: Yes, ComEd Cross-Exhibit 19.

18 BY MR. RATNASWAMY:

19 Q Okay. Is that the data request response to

20 which you refer on Line 659 of your direct?

21 A It appears to be, yes.

22 Q Okay. And is the letter that is the

1 attachment to that data request response the letter
2 to which you refer on Line 658?

3 A Yes.

4 Q Would you agree that in that letter, the
5 lender on behalf of EEI expressed the statement that
6 IRS examiners and IRS industry technical advisors are
7 unable to reach any resolution with taxpayers on this
8 issue?

9 MR. BOROVNIK: Could you point to where that's
10 at?

11 THE WITNESS: I haven't committed it to memory.
12 So if you could give me the citation.

13 MR. RATNASWAMY: And I actually left off three
14 words, which didn't help.

15 BY MR. RATNASWAMY:

16 Q All right. Page 2 -- the first full
17 paragraph of Page 2 of the letter -- the first full
18 paragraph, the last sentence, do you see the -- are
19 you on that paragraph?

20 A I'm on that paragraph.

21 Q All right. Tell me when you're finished
22 reading it.

1 A I finished.

2 Q Okay. Do you see a request for guidance
3 followed by a sentence which says, Without such
4 guidance, IRS examiners and IRS industry technical
5 advisors are unable to reach any resolution with
6 taxpayers on this issue?

7 A That sentence appears here.

8 Q Okay. And is it correct that your
9 understanding about the degree to which utilities
10 have made this change is also based on this letter,
11 the number of utilities that have done it?

12 A Well, some I decided based on my own
13 personal experience; but my statement that many
14 utilities have made -- it rests on the first sentence
15 in there -- Most transmission distribution companies
16 have been either granted permission by the
17 commissioner of the IRS to change their methods of
18 accounting for determining which expenditures are
19 deductible repairs under Section 162 must be
20 capitalized under Section 263 or in the process of
21 obtaining such permission, which the commissioner now
22 grants automatically.

1 Yeah, but beyond my direct knowledge
2 of the companies I cited, more generally, my
3 knowledge is based on that.

4 Q Has the IRS provided the guidance requested
5 in that paragraph?

6 A As far as I know, they have not.

7 Q Okay. Can you direct on Page 31 --

8 MR. BOROVIK: Excuse me, your Honor, regarding
9 this document, I wanted to state an objection -- I
10 wanted to let him finish talking about it; but for
11 the same reasons Mr. Rooney so eloquently stated,
12 this is a hearsay document. He's gotten -- if it's
13 for the purpose of impeachment, he's gotten that
14 information into the record; but to admit this
15 document into the record, we object.

16 MR. RATNASWAMY: The witness actually relied on
17 it, as he confirms, not just today; but in discovery
18 when he was asked about what was the basis of his
19 statement, he cited that very paragraph.

20 JUDGE SAINOT: Have you moved -- is there
21 something I'm missing?

22 Have you moved for admission of this

1 document?

2 MR. RATNASWAMY: No, I was planning to; but I
3 haven't yet.

4 JUDGE SAINSOT: Okay. I wanted to make sure
5 that we're addressing something that's real.

6 MR. BOROVIK: I'm sorry. I could hold off. I
7 thought he -- I wanted to wait until he finished.

8 JUDGE SAINSOT: All right. Why don't we hold
9 off a little bit until you're done.

10 BY MR. RATNASWAMY:

11 Q Direct on Page 31, you refer to a
12 proceeding before the Massachusetts Department of
13 Public Utilities.

14 Do you see that?

15 A Yes.

16 Q Okay. You refer to Boston Gas, Essex Gas
17 and Colonial Gas stating something.

18 Do you see that?

19 A Yes.

20 Q Okay. And what did you read in which they
21 stated that?

22 A The Company's direct testimony in the case

1 and the calculation of rate base. I stated there
2 that was just a way of conveying that -- reporting
3 what they had actually done.

4 Q Okay. So when you say "their direct
5 testimony," do you recall, did you mean National Grid
6 Exhibit NG, dash, NDL, dash, 1?

7 A That sounds right. It was the direct
8 testimony of Michael Laflamme.

9 Q Okay. And I can show it to you, but let's
10 just see if you remember.

11 In that same discussion by --

12 Mr. Laflamme?

13 A Laflamme.

14 Q -- Laflamme, do you remember him stating
15 the tax position was subject to audit and adjustment
16 by the IRS?

17 A I do remember that, yes.

18 Q Okay. Thank you.

19 If I refer to the IRS -- I'm sorry --
20 in context of the IRS, if I refer to something as a
21 Tier 1 issue, do you know what that is?

22 A Generally.

1 Q What's your general understanding?

2 A It's something that they'll give high-level
3 close scrutiny to.

4 Q Is it correct that when there's a Tier 1
5 issue, the IRS assembles an Issue Management Team to
6 prepare for particularly comprehensive and aggressive
7 auditing?

8 A I'm not sure about the term "aggressive,"
9 but I would agree with the rest of the description as
10 I understand it.

11 Q Okay. And would you agree that this
12 subject, the repair allowance, is an issue that the
13 IRS has identified as a Tier 1 issue?

14 A That's what's stated in the document that
15 we were referencing before. I understand that to be
16 correct.

17 Q Okay.

18 MR. RATNASWAMY: I don't have any further
19 questions.

20 I could either move the admission of
21 the exhibit now or if you want to wait until after
22 redirect.

1 MR. BOROVIK: Can I have just one minute. I'll
2 be brief.

3 (Whereupon, a discussion was had
4 off the record.)

5 MR. BOROVIK: I have no more questions for
6 Mr. Efron.

7 JUDGE SAINSOT: Okay. Then -- but what about
8 this document?

9 MR. RATNASWAMY: I mean, your Honor, it
10 literally is the letter he relies on --

11 MR. BOROVIK: Excuse me, your Honor, we're
12 going to withdraw our objection --

13 MR. RATNASWAMY: Okay.

14 MR. BORVICK: -- to that document being
15 admitted.

16 JUDGE SAINSOT: Okay. Any other objections to
17 the admission of this document, which --

18 MR. RIPPIE: The eloquent earlier speech was
19 given by -- not by Mr. Rooney, the handsome one.

20 MR. BOROVIK: I stand corrected, Mr. Rippie --
21 Mr. Rippie's eloquent speech.

22 JUDGE SAINSOT: Okay. Hearing no objection,

1 ComEd Cross-Exhibit 19 is entered into evidence.

2 MR. RATNASWAMY: Thank you.

3 JUDGE SAINSOT: Okay. Mr. Effron, you can step
4 down.

5 MR. SOLBERG: Your Honor, I have to enter an
6 appearance, I believe. It's my first appearance in
7 this proceeding.

8 Scott Solberg on behalf of
9 Commonwealth Edison Company with the law firm of
10 Eimer, Stahl, Klevorn & Solberg, 224 South Michigan
11 Avenue, Chicago, Illinois.

12 Your Honor, we'd like to call our next
13 witness.

14 On behalf of Commonwealth Edison
15 Company, Dr. Geoffrey Hewings.

16 JUDGE SAINSOT: Okay. Mr. Hewings, why don't
17 we swear you in.

18 (Witness sworn.)

19 MR. SOLBERG: If it will please the Court, I'll
20 present the evidence testimony.

21

22

1 GEOFFREY J.D. HEWINGS,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY
6 MR. SOLBERG:
7 Q Dr. Hewings, will you please state your
8 full name for the record.
9 A Geoffrey Hewings. Geoffrey is spelled with
10 a "G."
11 Q And by whom are you currently employed and
12 what --
13 A University of Illinois at Urbana-Champaign
14 and I'm a professor.
15 Q Sir, I'd like to draw your attention to two
16 separate pieces of testimony and their related
17 exhibits.
18 I believe you have before you a copy
19 of your rebuttal testimony. It's entitled Rebuttal
20 Testimony of Geoffrey J.D. Hewings, marked as ComEd
21 Exhibit 43.0, filed on November 22, 2010.
22 Do you see that?

1 A Yes, I do.

2 Q And with that, there should be two attached
3 documents, Exhibit 43.1, which is your CV --
4 Do you see that?

5 A I do.

6 Q -- and 43.2, which is your report, your
7 analysis.
8 Do you see that?

9 A I do.

10 Q Next, I'd like to draw your attention to
11 what's been marked as ComEd Exhibit 69.0, entitled
12 Surrebuttal Testimony of Geoffrey J.D. Hewings.
13 Do you have that document before you?

14 A I do.

15 Q And, for the record, I believe that was
16 filed on January 3, 2011.
17 Sir, are these documents your rebuttal
18 and surrebuttal testimony respectfully?

19 A They are.

20 Q Were these documents prepared by you or
21 under your supervision or direction?

22 A Yes.

1 Q Is your testimony reflected in these
2 documents true and correct to the best of your
3 knowledge?

4 A It is.

5 Q And do you adopt this testimony as your own
6 in this case?

7 A I do.

8 Q Sir, there's one housekeeping point that I
9 want to clarify.

10 In your surrebuttal testimony, which
11 is Exhibit 69.0, you refer to two prior filed
12 documents.

13 You refer to Exhibit 2.1, which was a
14 copy of your CV, correct?

15 A Right.

16 Q And you also refer to a written report as
17 Exhibit 2.2; is that correct?

18 A I do.

19 Q Now, Exhibits 2.1 and 2.2 were originally
20 filed on June 30, 2010, with your direct testimony;
21 is that correct?

22 A That's correct.

1 Q Now, ComEd Exhibit 43.1, which you've just
2 identified, is exactly the same document as
3 Exhibit 2.1, which is referenced in your surrebuttal
4 testimony; is that correct?

5 A That is correct.

6 Q And ComEd Exhibit 43.2, which you've just
7 identified, is also the same document and identical
8 to Exhibit 2.2 referenced in your surrebuttal
9 testimony, correct?

10 A That is correct.

11 Q So if your surrebuttal testimony was
12 revised to reference Exhibits 43.1 and 43.2, it would
13 have the same effect as the references that are in
14 it, correct?

15 A That is correct.

16 JUDGE SAINSOT: Where are these located?

17 MR. SOLBERG: The CV and the report were
18 submitted twice, your Honor, once with his direct
19 testimony as Exhibits 2.1 and 2.2 --

20 JUDGE SAINSOT: But you're not offering them --

21 MR. SOLBERG: No, because that was stricken,
22 your Honor. The same reports were submitted with his

1 rebuttal testimony as Exhibits 43.1 and 43.2, and
2 those we would be moving into evidence today.

3 JUDGE SAINSOT: Because where are they in -- in
4 Exhibit 43, where is the reference or is --

5 MR. SOLBERG: No -- I'm sorry -- Exhibit 69,
6 which is the surrebuttal report --

7 JUDGE SAINSOT: Right.

8 MR. SOLBERG: -- rather than filing these yet
9 again for a third time, they were referred to by
10 reference, but the reference was to Exhibits 2.1 and
11 2.2, which technically are stricken.

12 So I'm just trying to make the record
13 clear that the same documents have different evidence
14 numbers, different exhibit numbers.

15 JUDGE SAINSOT: But they are not attached?

16 MR. SOLBERG: They are not attached to
17 Exhibit 69, that's correct, your Honor.

18 JUDGE SAINSOT: Okay. Can we get copies?

19 MR. RIPPPIE: They're attached to Exhibit 43.

20 JUDGE SAINSOT: Okay. Nevermind.

21 MR. SOLBERG: Yeah, so you have those, your
22 Honor.

1 So, your Honor, at this point I would
2 like to move into evidence ComEd Exhibits 43.0, 43.1,
3 43.2 and 69.0.

4 JUDGE SAINSOT: Any objection?

5 MS. MUNSCH: Your Honor, CUB would just like to
6 add that we've worked with ComEd in attempting to
7 address this; but to the extent that 69.0 and 43.0
8 are considered both responsive to Mr. Colton's
9 testimony, which, I believe, is being worked out by
10 the Company and the Attorney General's Office, to the
11 extent that they wind up duplicating each other, we
12 would object to any duplications. It's our
13 understanding that the Company intends to revise
14 them, if necessary, to avoid duplication; but since
15 the scope of Mr. Colton's testimony is still pending,
16 I just wanted to note for the record it's been a
17 little bit confusing, maybe.

18 MR. RIPPPIE: We're continuing to work to avoid
19 duplication; but unlike some of the other
20 testimonies, both, Counsel, and, your Honor, where
21 we've actually lined things out, the question with
22 Dr. Hewings is simply one of duplication. It's

1 simply -- it's not one of the leading things because
2 they're not proper, it's one of having the same thing
3 said twice. And I'm sure we can resolve that.

4 MS. MUNSCH: I would agree with the Company's
5 representation. So I just wanted to note that before
6 we move on.

7 JUDGE SAINSOT: Okay. Duly noted.

8 Any other objection?

9 Okay. Hearing none, Counselor, your
10 motion is granted.

11 And ComEd Exhibits 43.0, 43.1, 43.2
12 and 69.0 are entered into evidence.

13 (Whereupon, ComEd Exhibit
14 Nos. 43.0, 43.1, 43.2 and 69.0
15 were admitted into evidence.)

16 MR. SOLBERG: Your Honor, at this point, we
17 would tender Dr. Hewings for cross-examination.

18

19

20

21

22

1 JUDGE DOLAN: Okay. Ready to proceed.

2 MS. MUNSCH: Thank you, your Honors.

3 CROSS-EXAMINATION

4 BY

5 MS. MUNSCH:

6 Q Dr. Hewing, my name is Kristin Munsch and I
7 represent the Citizens Utility Board in this case. I
8 have just a very couple brief questions for you.

9 And for purposes of the record, to
10 make things easy, I'll use 43.0, 43.2 as A reference
11 point, if we need to have them.

12 My -- as a general matter, though,
13 your testimony addresses the use of an econometric
14 model called the Chicago Regional Econometric Input
15 and Output Model; is that correct?

16 A That's correct.

17 Q And then if I can try, in layman's terms,
18 to put it simply, an econometric model examines the
19 relationship between multiple variables in sort of a
20 given assumption or an input that generates a
21 projected impact or result?

22 A That is correct.

1 Q And the variables in the model are based on
2 U.S. census data adjusted for the Chicago
3 metropolitan region?

4 A No, they are dependent on U.S. data that
5 generates the environment external to the Chicago
6 economy, and then we use the local Chicago data to
7 represent what goes on inside the Chicago economy.

8 So it's not a question of just taking
9 national data and adjusting it.

10 Q Okay. And I appreciate the clarification.
11 Thank you.

12 The model itself that is the Chicago
13 Regional Econometric Input and Output Model is
14 generic in the sense that it's not specific to a
15 public utility, but, instead, takes any given input
16 and could generate a result for that?

17 A That is correct.

18 It has, in various forms, anywhere
19 from 36 to 55 different sectors of the economy, one
20 of which would be the utility sector. In some
21 versions of the model, the utility sector is
22 separated between electricity, oil, natural gas and

1 water. In other cases, we aggregate all three
2 together.

3 Q And in this case, this is a pretty standard
4 model that you're using?

5 A Yes, it is.

6 Q And in this case, you have two sort of
7 assumptions -- I use probably the term "assumption"
8 (sic) interchangeably, not being an economist, so I
9 apologize -- but assumptions, each of which you
10 modeled individually; is that correct?

11 A Yes.

12 Q The first one was an annual expenditure by
13 ComEd of \$725 million in construction activity. And
14 by "annual," that's a 12-month period?

15 A That's correct.

16 Q And the second is an annual expenditure by
17 ComEd of \$850 million in operations and maintenance,
18 or O&M, activities?

19 A That is correct.

20 Q And these expenditures are based on annual
21 expenditures (sic) estimates given to you by ComEd?

22 A That is correct.

1 Q And you did not assess independently the
2 dollar figure at issue?

3 In other words, ComEd provided you
4 with an estimate of those expenditures and that's
5 what you used?

6 A That is correct.

7 We did not do any personal research to
8 verify those numbers.

9 Q And you did not do any analysis of -- on
10 the impact of an event, such as raising the overall
11 electric rate, such as either the price of supply or
12 price of delivery within Chicago?

13 A No.

14 MS. MUNSCH: Thank you.

15 No further questions.

16 JUDGE SAINSOT: Any redirect?

17 MR. SOLEBERG: No redirect, your Honor.

18 Thank you.

19 JUDGE SAINSOT: Okay, Mr. Hewing. You can step
20 down.

21 THE WITNESS: Thank you.

22 JUDGE SAINSOT: Now, are we doing Mr. Born next

1 or Mr. Terhune?

2 I think we ought to do Mr. Born next.

3 MR. TOWNSEND: Mr. Burns -- I'm sorry.

4 Mr. Bernstein is still not here, I believe.

5 JUDGE SAINSOT: Right. That's -- I think we

6 ought to do Mr. Born.

7 MR. RIPPIE: The attorney who would be putting

8 Mr. Born on is not here because she is walking over.

9 We just found out that Miss Hathhorn is not going on.

10 I tell you what, why don't we do this:

11 Why don't we swear Mr. Terhune in, get his direct

12 evidence in, and I will -- hopefully, she's listening

13 -- ask Carla to -- Carla Scarcella to walk over.

14 (Witness sworn.)

15 HAROLD L. TERHUNE,

16 called as a witness herein, having been first duly

17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY

20 MR. TOWNSEND:

21 Q Good afternoon, Mr. Terhune.

22 Could you please state your name and

1 spell your last name for the record.

2 A My name is Harry L. Terhune, T-e-r-h-u-n-e.

3 Q And do you have before you a document that
4 has been previously marked as REACT Exhibit 3.0, the
5 corrected direct testimony of Harry -- no, I'm sorry.
6 It's the direct testimony of Harry Terhune, REACT
7 Exhibit 3.0?

8 A Yes, I do.

9 Q And attached to that is there Exhibit 3.1,
10 3.2 and 3.3?

11 A Yes.

12 Q And do you also -- I'm sorry. It is the
13 corrected version.

14 Do you have before you what's marked
15 REACT Exhibit 3.0-C, the corrected direct testimony
16 of Harry L. Terhune?

17 A Yes, I do.

18 Q And do you intend for REACT Exhibit 3.0-C,
19 along with Exhibits 3.1, 3.2 and 3.3 to be your
20 prefiled direct testimony in this proceeding?

21 A Yes, I do.

22 Q Do you also have before you what has been

1 marked as REACT Exhibit 6.0-C?

2 A Yes, I do.

3 Q And that's entitled the Corrected Rebuttal
4 Testimony of Harry L. Terhune on behalf of the
5 Coalition to Request Equitable Allocation of Costs
6 Together, correct?

7 A Yes, it is.

8 Q And attached to that is Exhibit 6.1, 6.2
9 and 6.3?

10 A Yes, there are.

11 Q And do you intend for that to be your
12 corrected rebuttal testimony in this -- do you intend
13 for that to be your rebuttal testimony in this
14 proceeding?

15 A Yes, I do.

16 MR. TOWNSEND: And, your Honors, we have copies
17 of the corrected testimony that corrected
18 typographical errors that we will file on eDocket, if
19 you would like, but we have hard copies here for you
20 and for counsel today.

21 JUDGE SAINSOT: Thank you.

22 (Discussion off the record.)

1 JUDGE DOLAN: Is there any objection?

2 MR. ROONEY: No objection.

3 JUDGE SAINSOT: Okay. Hearing no objection,
4 your motion is granted, Counsel, and REACT
5 Exhibit 3.0-C and Attachments 3.1 through 3.3 as well
6 as REACT Exhibit 6.0 and 6.1 through 6.3 are entered
7 into evidence.

8 (Whereupon, REACT
9 Exhibit Nos. 3.0-C and 6.0 were
10 admitted into evidence as
11 of this date.)

12 MR. TOWNSEND: Your Honors, as we talked about
13 earlier on the record, we did receive a response from
14 ComEd to the administrative law judge's ruling on the
15 motion to compel.

16 And Mr. Terhune has had a chance to
17 review that -- that response and prepare an analysis
18 based upon that response.

19 With your indulgence, we'd like to
20 conduct some additional direct examination of
21 Mr. Terhune about that data request response and the
22 analysis that he's been able to perform.

1 JUDGE SAINSOT: And our understanding was that
2 we were going to wait until Mr. Bernstein got here.

3 MR. BERNET: And he's on his way here. We can
4 do this at the end.

5 JUDGE SAINSOT: Okay. We're not doing anything
6 until Mr. Bernstein gets here.

7 MR. TOWNSEND: Okay. We'll wait for him then.
8 Thank you.

9 MR. ROONEY: Do you want to address the other
10 cross-examination in setting that aside, your Honor?

11 JUDGE SAINSOT: Pardon me?

12 MR. ROONEY: Do you want to conduct
13 cross-examination of Mr. Terhune or do you want to
14 wait until Mr. Bernstein gets here to address the
15 other issues?

16 JUDGE DOLAN: Mr. Townsend, are you okay with
17 proceeding with the other cross-examination?

18 MR. TOWNSEND: Yeah, that's fine.

19 JUDGE SAINSOT: Okay. Then we'll just take a
20 break when -- either when you're done or when
21 Mr. Bernstein gets here, whatever feels better.

22 MR. ROONEY: Time had been reserved, your

1 Honors, from IIEC and CTA.

2 JUDGE SAINSOT: I don't see anybody here from
3 CTA.

4 IIEC?

5 MR. REDDICK: Yes, your Honor.

6 CROSS-EXAMINATION

7 BY

8 MR. REDDICK:

9 Q Mr. Terhune, my name is Conrad Reddick.
10 I'm here representing the Illinois Industrial Energy
11 Consumers. I have one clarifying question that I
12 don't believe will take very much time at all.

13 If you turn to your rebuttal
14 testimony, REACT Exhibit 6.0, Page -- well, Line 284.

15 MR. TOWNSEND: And, Mr. Reddick, just for the
16 record, I believe that the pages are the same, but
17 his rebuttal testimony is now 6.0-C.

18 MR. REDDICK: 6.0-C?

19 JUDGE SAINSOT: Okay. And what's the line
20 again? I'm sorry.

21 MR. REDDICK: 284 on my copy.

22 JUDGE DOLAN: Does that light bother you?

1 MR. REDDICK: I won't be here that long.

2 JUDGE DOLAN: Okay. All right.

3 MR. TOWNSEND: Mr. Reddick, here's a copy of

4 the corrected version.

5 MR. REDDICK: 283 on the corrected version.

6 JUDGE SAINSOT: And that's on Page 13.

7 MR. REDDICK: That is on Page 13.

8 BY MR. REDDICK:

9 Q If you look at the first two sentences

10 there, at the end of the second sentence, you use the

11 phrase, Should be predominantly allocated to customer

12 classes which are the primary users of single-phase

13 service.

14 You see that?

15 A Yes, I do, sir.

16 Q I just wanted to make sure I understood

17 what you meant by the word "primary."

18 As you use it there, do you mean to

19 refer to primary voltage customers or primary in the

20 sense of main or principal?

21 A It's not intended to reflect primary

22 voltage customers. My intention was the meaning of

1 principal or main.

2 MR. REDDICK: Thank you.

3 That's all.

4 JUDGE DOLAN: Thank you.

5 JUDGE SAINSBOT: Okay. ComEd?

6 MR. ROONEY: Yes.

7 CROSS-EXAMINATION

8 BY

9 MR. ROONEY:

10 Q Good afternoon, Mr. Terhune. John Rooney

11 on behalf of ComEd.

12 A Good afternoon, Mr. Rooney.

13 Q Mr. Terhune, you would agree that

14 Commonwealth Edison Company's the largest electric

15 distribution company in Illinois?

16 A I would certainly agree with that.

17 Q And would you agree that ComEd is

18 responsible to provide electric distribution service

19 to approximately 3.7 million customers in Illinois?

20 A The range sounds correct.

21 Q And, today, you're here presenting

22 testimony on behalf of an ad hoc coalition called

1 REACT; is that correct?

2 A Yes, my testimony is the REACT coalition.
3 That's Finkl and Sons, Aux Sable Liquid Products,
4 City of Chicago, Commercial Energy, Flint Hills
5 Resources, Futuremark Paper Company, Integrys Energy
6 Services, Interstate Gas Supply of Illinois, the
7 Metropolitan Water Reclamation District of Greater
8 Chicago, PDV Midwest Refining, United Airlines, and
9 Wells Manufacturing.

10 I would consider that to be a wide
11 representation of the large customers, including,
12 Chicago and the sanitary district. So it's a --
13 these are some of the principal entities of commerce
14 and public service in the Chicago area.

15 Q Thank you.

16 Now, Mr. Terhune, your testimony
17 addresses the allocation of costs related to
18 customers that make up the members of the extra large
19 load customer class, correct?

20 A Yes, sir. That's the group of customers
21 whose loads exceed 10,000 kilowatts.

22 Q Okay. Now, of the 12 members of REACT that

1 you've identified, how many of those are extra large
2 load class customers?

3 A I'm not sure which is which.

4 I suspect -- I can't speak to the
5 Integrays, for example, which is a -- which is a
6 retail customer aggregation group, I believe. So I
7 can't speak to that.

8 Q Okay.

9 A And ComEd, to my knowledge, has never
10 provided a list to REACT of the identities of its
11 extra large load customers.

12 So that's the best I can do for you,
13 Mr. Rooney.

14 MR. ROONEY: I'd move to strike that last
15 portion of the testimony.

16 I asked which members of REACT were
17 extra large load class customers, not the remaining
18 members.

19 JUDGE SAINSOT: Sustained.

20 MR. ROONEY: Thank you.

21 JUDGE DOLAN: Mr. Rooney, before you proceed
22 any further, I did notice that Mr. Balough was in the

1 room. Did you want to allow him to do his cross?

2 MR. ROONEY: Sure. Absolutely.

3 Thank you.

4 JUDGE DOLAN: Thank you.

5 MR. BALOUGH: I appreciate it, your Honor, but,

6 at present, I don't have any questions; but in case I

7 need any after they're -- for redirect.

8 JUDGE DOLAN: Okay.

9 MR. BALOUGH: But I appreciate it.

10 JUDGE DOLAN: Okay. Thank you.

11 MR. BALOUGH: Otherwise, Mr. Rooney might

12 conduct friendly cross.

13 MR. ROONEY: Not more than usual.

14 MR. TOWNSEND: Your Honor, I also would note

15 that Mr. Bernstein is now here.

16 JUDGE DOLAN: All right. But, I mean, do we

17 want to proceed --

18 MR. TOWNSEND: As you wish.

19 JUDGE DOLAN: Why don't we just let Rooney keep

20 going and then we'll -- we'll take a break when it's

21 time for that.

22 JUDGE SAINSBOT: How much do you have, Mr.

1 Rooney?

2 MR. ROONEY: Oh, I had reserved approximately
3 an hour, but it may be less, depending on how things
4 proceed.

5 JUDGE SAINSOT: Okay. Well, we'll just see how
6 it goes.

7 MR. ROONEY: Thank you.

8 MR. TOWNSEND: Thank you.

9 BY MR. ROONEY:

10 Q Mr. Terhune, given your last answer then,
11 am I correct that in the course of preparing your
12 testimony here on behalf of REACT, you didn't seek to
13 determine which members of REACT were members of the
14 extra large load customer class?

15 A No, my principal effort was looking at the
16 attributes of service to the extra large load class.
17 That's how I got into this, I was approached by
18 REACT --

19 Q Thank you. We'll get into that a little
20 bit later. Thank you.

21 A Very good. Thank you. I appreciate the
22 opportunity.

1 Q Mr. Terhune, do you know how many customers
2 make up the extra large load class?

3 A I've seen several different numbers.

4 I've been using 60 as an
5 approximation. Depending on which party has been
6 producing displays, whether it was ComEd information
7 or others, it's in that range.

8 Q Okay.

9 A But I have seen substantial variance from
10 that number.

11 And since we don't know who they are,
12 I can't tell you for sure.

13 Q And in terms of -- would you accept,
14 subject to check, that there are 57 customers that
15 comprise the extra large load class?

16 A That is a reasonable number.

17 Q Okay. And in the course of preparing your
18 direct and rebuttal testimony, did you seek to
19 determine whether the non-REACT members of the extra
20 large load customer class support the position set
21 forth in your testimony?

22 A There was no way to determine them. I

1 don't know who they are.

2 Q Including the members of REACT as well?

3 A Well, I obviously listed the members of
4 REACT; have not inquired of each of them to determine
5 whether they are, in fact, a 10,000-megawatt-plus
6 customer or not.

7 Q Now, Mr. Terhune, you've never been
8 principally responsible for the preparation of an
9 embedded cost of service study, correct?

10 A That is correct.

11 I have had some experience with the
12 cost of service when I was a -- when I was system
13 planning manager at Commonwealth Edison and I was
14 assigned on a temporary basis to work on a strategic
15 planning study.

16 And so in the course of that work, I
17 had the opportunity to work with, for example,
18 Mr. Crumrine of ComEd in working through the
19 allocation factors.

20 The principal function that I was
21 engaged in was varying the elements of the ComEd
22 environment, for example, customer -- customer

1 growth, price of power, rate of investment, to
2 determine what the consequences would be in terms of
3 rates, in terms of customer acceptance.

4 So I was never -- and I was never
5 employed by the rate department, and so I was never
6 principally responsible for all of the myriad things
7 that are associated with turning out a rate study.

8 MR. ROONEY: Your Honors, I'd respectfully move
9 to strike everything after the first part of his
10 answer where he indicated, no, he was not principally
11 responsible for the preparation of an ECOS.

12 MR. TOWNSEND: I think that his answer put that
13 in context. Just -- they asked about his experience
14 with an embedded cost of service study.

15 JUDGE DOLAN: I'm going to sustain the
16 objection. And, Mr. Terhune, please just try to
17 answer the question as asked.

18 THE WITNESS: Very good.

19 JUDGE DOLAN: If he wants to follow up with
20 your -- your counsel wants to follow up, he will,
21 okay?

22 THE WITNESS: Very good.

1 Thank you.

2 BY MR. ROONEY:

3 Q And with a light variation on that
4 question, Mr. Terhune, am I correct that you've never
5 been principally responsible for the preparation of
6 an ECOS in relationship to an electric utility's
7 distribution-related rate case?

8 A That is correct.

9 Q Nor have you ever been principally
10 responsible for the preparation of a marginal cost of
11 service study; isn't that correct?

12 A That is correct.

13 Q Now, am I also correct that you've never
14 been principally responsible for the development of
15 distribution rates for an electric utility in
16 connection with a distribution rate case?

17 A That is correct.

18 Q Now, attached to your direct testimony as
19 REACT Exhibit 3.2, you identify seven proceedings
20 where you've presented testimony. And if you want to
21 -- let me know when you get to those.

22 A I have that page.

1 Q Excellent.

2 The first proceeding there is a
3 Commonwealth Edison rate case, Docket 94-0065. Would
4 you agree that your testimony in that proceeding
5 focused on why ComEd adopted MAIN, the Mid-American
6 Interconnected Network's recommended reserve margin
7 for its long-term planning?

8 A That is correct.

9 Q And would you agree that MAIN's recommended
10 reserve margin addressed the need for utilities to
11 have adequate supply to meet peak demand on the
12 system?

13 A With the proper sufficient reserve to
14 assure that ComEd would meet the standard of
15 one-day-in-ten -- in ten years exposure to the
16 potential of being unable to serve all the load, yes.

17 Q And would you agree that those issues
18 involving MAIN's recommended reserve margin related
19 to a determination of the used and usefulness of
20 certain ComEd nuclear generating plants in that
21 proceeding?

22 A I would say there would be a direct

1 relationship, but I did not testify with respect to
2 used and useful. It's only -- only with respect to
3 the merits of the MAIN study.

4 Q I agree.

5 Now, do you recall the ComEd witness
6 responsible for discussing cost allocation -- cost
7 allocation issues in that proceeding?

8 A I do not.

9 Q To refresh your recollection, would you
10 accept, subject to check, that ComEd Witness Arlene
11 Juracek presented testimony describing how ComEd's
12 proposed allocation of costs and rate design?

13 MR. TOWNSEND: Objection. Relevance.

14 JUDGE SAINSOT: Where are you going with this,
15 Mr. Rooney?

16 MR. ROONEY: Just demonstrating that Mr. -- in
17 that proceeding, Mr. Terhune did not testify as to
18 cost allocation issues. That's one of the matters
19 that's listed on his CV.

20 MR. TOWNSEND: He's already answered that
21 question, your Honor. And so asked and answered
22 along those lines.

1 JUDGE SAINCOT: Okay. Objection sustained.

2 BY MR. ROONEY:

3 Q Okay. Turning to the second and third

4 matters that are identified on your -- on REACT

5 Exhibit 3.2 under Commonwealth Edison Company.

6 Would I be correct that your testimony

7 in those matters did not address allocation of costs

8 among ComEd's customer classes? Is that correct?

9 A That is correct.

10 Q And turning to Item 4, that matter

11 concerned the proposed construction of a transmission

12 line, correct?

13 A That's right. A joint transmission line

14 extending from Commonwealth Edison to American

15 trans- -- to American Transmission Company.

16 Q And while that testimony is listed as being

17 presented for ComEd, you were employed by American

18 Transmission Company at that time; isn't that

19 correct?

20 MR. TOWNSEND: Objection. Mischaracterizes the

21 testimony.

22 MR. ROONEY: I don't think I'm

1 mischaracterizing the testimony.

2 JUDGE SAINSOT: Can you repeat the question?

3 BY MR. ROONEY:

4 Q I just said, And while you have listed that
5 testimony under Subheading A on behalf of
6 Commonwealth Edison Company, you were employed by
7 American Transmission Company, LLC, correct?

8 A Yes. I was vice president of operations
9 for ATC.

10 Q Now, turning to the three matters under
11 American Transmission Company, LLC.

12 Would you agree that the testimony you
13 offered in each of those proceedings did not address
14 the allocation of costs among customer classes?

15 A That is correct.

16 Q Thank you.

17 Mr. Terhune, as I understand your
18 rebuttal testimony, one of your four conclusions is
19 that -- and I quote -- and this is on Page 3, Line 60
20 and 61. And I'm sorry. This was on your 6.0. So it
21 may be off a line.

22 But I quote, An analysis of assets

1 used to serve up -- now, one of your four conclusions
2 is that an analysis of assets used to serve the extra
3 large load customer class is necessary and
4 appropriate.

5 Do you see that?

6 A Yes, I do.

7 Q And then you further state that the
8 Commission should compel ComEd to undertake a study
9 of the assets used to serve the extra large load
10 class and design rates based on the class's fair
11 share of its utility assets that it actually uses,
12 and that remains your position today, correct?

13 A It does. That is my position today.

14 Q Now, Mr. Terhune, are you familiar with the
15 Commission's Part 285 rules which relate to the
16 standard information requirements for filing a rate
17 case?

18 A I'm not -- would you make me aware of
19 those?

20 Q Well, are you -- I would assume then that
21 you are not familiar with those portions of the
22 Commission's Part 285 rules that set forth the

1 requirements related to the filing of an embedded
2 cost of service study?

3 MR. TOWNSEND: Objection. Asked and answered.

4 MR. ROONEY: No.

5 JUDGE SAINSOT: Sustained.

6 BY MR. ROONEY:

7 Q Mr. Terhune, then I take it from your
8 earlier --

9 JUDGE SAINSOT: Pardon me?

10 MR. ROONEY: Oh, I'm sorry. I thought you
11 were...

12 BY MR. ROONEY:

13 Q Mr. Terhune, then I take it from your
14 earlier answer that you did not review the Part 285
15 rule related to an embedded cost of service study
16 prior to the filing of your direct testimony?

17 A That is correct.

18 Q Okay. Now, Mr. Terhune, in the course of
19 preparing your direct testimony and rebuttal
20 testimony, did you have any -- did you review any
21 prior Commission orders addressing ComEd's allocation
22 of costs to the extra large load class of delivery

1 customers?

2 A I looked at the investigative order.

3 Q Okay. Did you -- did you review the

4 Commission's order from ComEd's last distribution

5 rate case in Docket 07-0566?

6 A I did not.

7 Q And are you aware that REACT was a party in

8 that proceeding?

9 A That was my understanding.

10 Q Do you know whether REACT appealed the

11 Commission's decision in that -- the Commission's

12 order from that proceeding?

13 MR. TOWNSEND: Objection. Relevance.

14 JUDGE SAINSOT: Relevance?

15 MR. ROONEY: It's going to the question of

16 whether or not he was aware of the -- whether or not

17 REACT took exception to the Commission's ruling in

18 that case in rate design. I can pull out the

19 specific language from the order to further go into

20 my discussion.

21 JUDGE SAINSOT: Overruled.

22 MR. ROONEY: Thank you.

1 BY MR. ROONEY:

2 Q Do you need my question, Mr. --

3 A Repeat it then.

4 Q Sure.

5 A I got confused.

6 Q That's okay. Are you -- do you know
7 whether REACT filed an appeal of the Commission's
8 07-0566 order on issues related to rate design?

9 A I do not.

10 Q In the course of preparing your direct and
11 rebuttal testimony, did you review any other
12 Commission orders involving other electric gas or
13 distribution utilities addressing the allocation of
14 costs to customers?

15 A I did not review any order from the
16 Commission to any other utility.

17 In the course of preparing for -- for
18 my testimony, I have seen references to such things,
19 but I did not -- I did not see any order myself,
20 personally.

21 Q Now, turning back to your recommendation
22 that we just -- we talked about a little bit earlier

1 that's in your rebuttal testimony about -- that it's
2 necessary -- that an analysis of assets used to serve
3 the extra large customer class is necessary and
4 appropriate and that the Commission should compel
5 ComEd to undertake a study of the assets used to
6 serve the extra large load class and design rates
7 based on the class's fair share of the assets that it
8 uses -- actually uses, excuse me.

9 Are you aware of any Commission order
10 that has required a utility to undertake a study of
11 assets used to serve a particular class as you
12 propose here?

13 A I don't have the investigative order in
14 front of me, but my recollection is that in that
15 investigative order, there is a line item, No. 4,
16 which directs Commonwealth Edison to look at each
17 class and the components of electric service that
18 serve that class.

19 Q Well --

20 A It's also quoted in Mr. Alongi's testimony.

21 Q But sitting here today, you're not aware of
22 whether that directed ComEd -- or I'm sorry. I

1 was -- I'll strike that.

2 With regard to your recommendation,
3 Mr. Terhune, you've reflected that you've reviewed
4 the order in the rate design investigation docket,
5 ComEd's rate design docket, correct?

6 A Yes, I've seen it. I've -- I have focused
7 most of its attention on ComEd's response. So I can
8 say I'm not familiar with it line by line.

9 Q Now, in the course of preparing for the
10 filing of your direct and rebuttal testimony, did you
11 review the record from the rate design investigation
12 proceeding?

13 A No, I did not.

14 MR. ROONEY: I'd like to approach. Your
15 Honors, I'm not going to mark this.

16 BY MR. ROONEY:

17 Q Now, Mr. Terhune, what I've just handed you
18 is a petition for interlocutory review that REACT
19 filed in the course of the rate design investigation.

20 And what I'd like -- have you seen
21 this document before?

22 A I don't recall seeing this.

1 Q Okay. And in the course of preparing
2 your -- and I'd like you to turn to Page 6, if you --
3 A This is part of the 2008 case?
4 Q That's correct.
5 A Okay. And where do you want me to --
6 Q Page 6.
7 MR. TOWNSEND: Objection, your Honors. I don't
8 know the scope.
9 MR. ROONEY: I disagree. I dis- --
10 JUDGE SAINSOT: Could you elaborate a little,
11 Mr. Rooney?
12 MR. ROONEY: Certainly. Certainly, your Honor.
13 This is going to be used for purposes
14 of impeachment. It's -- it -- it's here to contrast
15 Mr. Terhune's proposal in this case with what REACT
16 was requesting in the rate design investigation case
17 and what the Commission ultimately determined with
18 regard to this petition for interlocutory review.
19 And, in particular, where I'm going to
20 point to is the request that REACT made on Page 6,
21 and that's in the bolded -- or bolded language where
22 REACT was requesting certain information, in

1 particular, information regarding the equipment and
2 investment amount for each piece of equipment
3 associated with service provided for ComEd.

4 And I wanted to compare that to what
5 Mr. Terhune is asking the Commission here today.

6 MR. TOWNSEND: Your Honors, the position of
7 REACT, as Mr. Terhune has said, he did not study that
8 within the context of his testimony. That's beyond
9 the scope of what he testified to.

10 All of the arguments that Mr. Rooney
11 has made, he can make in brief as opposed to asking
12 this witness to try to digest one portion of a
13 lengthy document and try to put that into context of
14 a record which he's not aware of, where you've got
15 one filing in the context of a lengthy investigation
16 seems entirely inappropriate to --

17 JUDGE SAINSOT: Can somebody enlighten me here?
18 Why isn't this something that would be discussed when
19 we get the discussion going with Mr. Bernstein?

20 MR. ROONEY: This is -- this is a different
21 issue.

22 JUDGE SAINSOT: Okay.

1 MR. ROONEY: This is -- this is a request that
2 REACT made in the last proceeding and the Commission
3 denied the petition for interlocutory review, which
4 is where we're going. And I want to contrast that to
5 what REACT's position is here through Mr. Terhune in
6 that they're asking for, in our view, substantially
7 the same request: Identifying customer-specific
8 assets used to serve facilities for certain
9 customers.

10 JUDGE SAINSOT: But why isn't that a discovery
11 issue?

12 MR. ROONEY: Well, it has been. It's been
13 rejected by the ALJs and the Commission in this case.

14 JUDGE SAINSOT: But why isn't that -- I'm
15 probably just being dense, and forgive me, but why
16 isn't that part of what we were going to discuss with
17 Mr. Bernstein?

18 MR. ROONEY: Well, that's -- let me withdraw
19 the question.

20 JUDGE SAINSOT: Okay.

21 BY MR. ROONEY:

22 Q Just so --

1 A It --

2 Q There's no question pending, Mr. Terhune.

3 A By withdrawing -- I'd like to understand

4 why -- where I am.

5 Q There's no question pending and I'm going

6 to ask you a new question.

7 A You've -- at this point, you have given me

8 this document that I have in my hands.

9 Q Right.

10 A And you're going to move -- work from this?

11 MR. TOWNSEND: There's no need for you to

12 review that document.

13 THE WITNESS: Oh. So I can set this aside?

14 BY MR. ROONEY:

15 Q I just want to confirm -- so in terms of

16 your preparation for direct and rebuttal testimony

17 and, in particular, in this instance, your proposal

18 set forth in your rebuttal testimony, you are not

19 aware of what REACT requested in this pleading in the

20 rate design investigation, correct?

21 A I have seen materials in the course of the

22 preparation of the iterations of my testimony that

1 reflect that a request for a detailed accounting of
2 individual pieces of equipment physically present at
3 the REACT customers or the class customers had been
4 -- at least that was the understanding given to
5 ComEd -- or ComEd took that understanding. And I
6 understand that the Commission had rejected that
7 request.

8 This issue arises again in
9 Mr. Alongi's rebuttal testimony --

10 MR. ROONEY: I'm going to object, your Honor.

11 THE WITNESS: Can I address it --

12 JUDGE SAINSOT: This is a yes or no answer.

13 MR. ROONEY: Correct.

14 THE WITNESS: Okay.

15 No, I had never seen this before you
16 brought it up.

17 BY MR. ROONEY:

18 Q Okay. Thank you.

19 And then I gather you're unaware as to
20 how the Commission ruled on the pleading that REACT
21 filed, right?

22 A I think what I said is that I encountered

1 this issue and it was my understanding that the
2 Commission had rejected the request for detailed
3 actual physical equipment information.

4 Q Thank you.

5 A That's my understanding.

6 Q Thank you.

7 Now, Mr. Terhune, when were you first
8 retained to present testimony on behalf of REACT in
9 this proceeding?

10 A I believe I started working on this in
11 October.

12 Q And by "started working on this," do you
13 mean that's when you were engaged to begin work on
14 this on behalf of REACT?

15 A That is correct.

16 Q And who first contacted you about the
17 possibility of being engaged as a witness in this
18 proceeding?

19 A I was first contacted by Michael Strong,
20 one of the REACT attorneys, and I was first asked to
21 -- primarily to help explain to the REACT members how
22 they are served by Commonwealth Edison.

1 And it was my understanding from
2 discussions with REACT attorneys that they haven't
3 been able to get a good picture of exactly how did
4 they get their service and what did it mean compared
5 with other classes.

6 So I think, as you look at my
7 testimony, half of it is a tutorial both for the
8 REACT folks and for the Commission.

9 Q I don't mean to interrupt you, Mr. Terhune.
10 I just asked who first contacted you when you
11 first --

12 A October 2010.

13 Q And it was Mr. Strong that contacted you?

14 A Mr. Strong is the first person I talked to,
15 yes.

16 Q Okay. And I'm assuming, during the course
17 of your work in this matter, you worked with
18 Mr. Townsend?

19 A Yes.

20 Q And you worked with Mr. Skey also --

21 A Yes.

22 Q -- from DLA Piper?

1 A Primarily with Mr. Strong; but, yes, I did
2 work with the other two fellows.

3 Q Okay. Now, we've already identified who
4 the members of REACT are. They're reflected in
5 Footnote 1 of your direct testimony, correct?

6 A That's correct. Yes, Mr. Rooney.

7 Q And, Mr. Terhune, as we just discussed, you
8 didn't testify on behalf of REACT in the rate design
9 investigation docket, correct?

10 A That's correct.

11 Q Nor did you testify on behalf of REACT in
12 ComEd's last distribution rate case, which was Docket
13 07-0566, correct?

14 A That is correct.

15 Q So in the course of getting up to speed,
16 especially in October and direct testimony was -- on
17 rate design issues were -- was due on November 19th,
18 did you attend any meetings of REACT members to
19 better understand their concerns?

20 A I did not attend any REACT meetings.

21 I'm not sure whether there were any in
22 the time that I've been involved in this.

1 Q Did you participate in any REACT
2 teleconferences to better understand the concerns of
3 the REACT membership?

4 A I did not.

5 Q During the course of preparing your direct
6 testimony, have you spoken with anyone at A. Finkl
7 and Sons concerning the issues in your direct
8 testimony?

9 A Not directly.

10 I know that --

11 Q That's -- I think that answers my question.
12 Do you know whether your testimony
13 represents the position of A. Finkl and Sons?

14 A What I know is that the drafts of my
15 testimony were sent by the DLA Piper folks to all of
16 REACT -- to individuals in all of the REACT
17 membership companies, and that testimony presumably
18 was approved because it was sent to the Commission.

19 So I'm sure that they are aware of the
20 details of my testimony and had an opportunity to
21 object to the final drafts.

22 Q But you're not -- you, yourself, didn't

1 communicate with any of the REACT members?

2 A That is correct.

3 Q And all of your discussions then you had
4 during the course of the preparation of your
5 testimony were exclusively with the attorneys who
6 represent REACT; is that correct?

7 A That's correct.

8 Q In the course of preparing your testimony,
9 did you visit any of the locations to -- other REACT
10 members to look at ComEd electric facilities that are
11 on-site?

12 A I did not -- and since October, I did not.

13 As a Commonwealth Edison employee,
14 I've been to several of these over the years, but
15 not -- nothing recently. Certainly nothing since
16 October of 2010.

17 Q And -- and as I read your CV, you were a
18 ComEd employee last in 1998, correct?

19 A That's when I retired from ComEd. I'm a
20 grateful retiree and pensioner.

21 MR. ROONEY: Great. Thank you.

22 I have no further questions.

1 JUDGE DOLAN: Thank you.

2 JUDGE SAINSOT: Any redirect?

3 Mr. Townsend?

4 MR. TOWNSEND: We do have a couple of lines,
5 with your indulgence, your Honor.

6 JUDGE SAINSOT: Okay.

7 REDIRECT EXAMINATION

8 BY

9 MR. TOWNSEND:

10 Q Mr. Terhune, do you recall Mr. Rooney
11 asking you questions about your experience with
12 embedded cost of service studies?

13 A Yes, I do.

14 Q And can you explain to the Commission what
15 experience you do have with embedded cost of service
16 studies, even though you haven't actually conducted
17 one?

18 A Yes. As I mentioned earlier -- I don't
19 know whether it was stricken or not, but I did work
20 in the Commonwealth Edison strategic planning
21 process. And as part of that work, I was involved in
22 using the allocation tables to pass through

1 information such as what the customer's load would
2 be, how demands of different customer classes might
3 rise or fall, what the impact of gas prices on
4 overall electricity price would be.

5 So I think my experience with this is
6 not a narrow focus on mechanics of rate case
7 preparation, but the broader view of the allocation
8 process fits into the overall ComEd strategy.

9 So I did work with spreadsheets for
10 the allocation tables, but not with the objective of
11 pumping out a specific rate case, but to inform the
12 Commonwealth executive management on what the
13 consequences of different environmental factors in
14 the ComEd world at that time would -- would produce.

15 Q And why is it that you believe that the
16 experience that you do have is relevant to the
17 testimony that you provide?

18 A Because it allowed me to follow through the
19 concept of moving from the FERC accounts.

20 For example, in the distribution
21 account -- in the distribution category, there is a
22 section called Overhead Lines or Underground Lines.

1 That -- for example, for overhead lines, it includes
2 different sizes of wire with different voltages. And
3 I had an understanding of how the assets in the FERC
4 accounts get transferred and flow down into the
5 ratemaking process.

6 But I was never involved in the
7 construction of that structure. I was only involved
8 in the use of that structure.

9 Q Do you recall the question from Mr. Rooney
10 about being retained by REACT?

11 A Yes, I do.

12 Q Can you explain why you were originally
13 retained by REACT?

14 A I was retained by REACT -- first, what they
15 asked me to do was to explain how that extra large
16 load class of customers was served.

17 And as -- my understanding of that
18 request in a discussion one afternoon with the three
19 REACT lawyers that are here, our -- when they made
20 requests for specific equipment information, they
21 didn't get any results. And so in -- they were
22 unable to piece together in their own minds and for

1 the benefit of the customers who were in that group
2 how does it all work, how does it fit together and
3 what does it mean for the way that they are charged.

4 And so I got into that with them and I
5 explained how power moves down from the bulk power
6 transmission system from generation to the PJM
7 transmission to the Commonwealth Edison-owned and
8 ICC-regulated transmission to the dis- -- primary
9 distribution system through the substations to the
10 distribution transformers down to the individual
11 customers.

12 And from that point, I describe my
13 understanding of what types of facilities in each of
14 those classes of assets applied to the extra large
15 load class as compared to the very large load class,
16 which is the thousand- to 10,000-megawatt class, or
17 the large load class, which is the 400-kilowatt up to
18 a thousand kilowatt class, or the smaller classes --

19 MR. ROONEY: Your Honor, at this point, I'd
20 object. It's gone way beyond the scope of cross.

21 The cross question related to when was
22 he engaged by REACT and who was he engaged by.

1 JUDGE SAINSOT: Sustained.

2 BY MR. TOWNSEND:

3 Q Mr. Terhune, do you recall the question
4 from Mr. Rooney about not visiting customer
5 locations?

6 A Yes.

7 Q Do you think it was necessary to visit
8 customer locations in order to be able to prepare the
9 testimony that you presented?

10 A Potentially, since -- since -- at that
11 point, I had no information from ComEd about the
12 facilities at present.

13 Within the last week, ComEd has
14 provided some information to us that is -- that has
15 been relevant, that is perhaps not everything that we
16 wanted to see or felt was appropriate; but they gave
17 some certain information, I think, to IIEC and they
18 gave to REACT --

19 MR. ROONEY: Your Honor, I object again.

20 JUDGE SAINSOT: Sustained.

21 MR. TOWNSEND: Nothing further, your Honor.

22 MR. ROONEY: Your Honor, I do have a little bit

1 of recross, if you don't mind.

2 RECROSS-EXAMINATION

3 BY

4 MR. ROONEY:

5 Q Mr. Terhune, I'm going to show you a data
6 request response that was served on ComEd earlier
7 this week.

8 MR. ROONEY: And I'm not going to mark it, your
9 Honor. This is for purposes of discussion.

10 BY MR. ROONEY:

11 Q Do you recall the -- that Mr. Townsend
12 asked you a question and you responded about the fact
13 that you had been involved in some work related to an
14 ECOS as part of a corporate strategic planning in
15 1994? Correct?

16 A That's correct.

17 It was in the context of ComEd's
18 strategic plan development.

19 Q All right.

20 A It was not an ECOS in the sense of
21 something to go in the middle to grind out a rate
22 base.

1 Q Okay. And what I'm going to hand you now
2 is what I printed off actually the 13th, yesterday,
3 from your web site.

4 A Yes.

5 Q And in particular --

6 A It should be exactly what was attached to
7 my direct testimony.

8 Q Right. Well, I just wanted to make sure
9 out of abundance of caution. So I did that.

10 A Well, wait a minute. One of my kids was
11 the one who updates this, and so I might be one --

12 Q I can sympathize with that.

13 And I'd like to turn your attention to
14 Page 4. And on Page 4, if you look in the middle of
15 the page there, it reads, He has worked closely with
16 a number of management engineering consulting
17 organizations.

18 Do you see where that sentence starts?

19 A Yes.

20 Q And it talks about who's Allen, right?

21 A That's correct.

22 Q And you just note that that -- on your web

1 site, you don't identify the fact that all that you
2 have testified -- or excuse me -- worked on matters
3 involving ECOS-related issues; am I correct?

4 A ECOS was within the -- the cost allocation
5 work that I did was inside the strategic planning
6 work --

7 Q Okay.

8 A -- which all of which was confidential. So
9 I can't really talk to issues more than the process.

10 Q And that's fine.

11 And that work took place back in 1993,
12 1994 time frame?

13 A That's right. While ComEd was still an
14 integrated utility.

15 Q Vertically integrated utility?

16 A Right. That's one of the things that makes
17 my testimony in this proceeding particularly
18 relevant, because at that time --

19 MR. ROONEY: Your Honor, move to --

20 JUDGE DOLAN: Okay.

21 JUDGE SAINSOT: Sustained.

22 MR. ROONEY: Thank you. I have no further

1 questions.

2 FURTHER REDIRECT EXAMINATION

3 BY

4 MR. TOWNSEND:

5 Q Mr. Terhune, is there a reason why that
6 experience is particularly relevant?

7 MR. ROONEY: I think we asked and answered. It
8 was --

9 MR. TOWNSEND: It may have been beyond the
10 answer that he asked (sic), but it certainly forms
11 the answer that he wanted to provide and puts it in
12 context.

13 THE WITNESS: In 1994, the transmission and
14 delivery -- the transmission and distribution
15 delivery function of Commonwealth Edison could be
16 viewed as the tail of the dog. But now that -- the
17 generation and power procurement, all of that is
18 separated from the Commonwealth Edison of today, what
19 used to be the tail is the whole dog.

20 And so now, the distinctions between
21 the costs of services to classes might have been
22 trivial in the context of the old ComEd, but they are

1 meaningful in the context of today's ComEd where T&D
2 is the entire doing.

3 MR. TOWNSEND: Thank you.

4 JUDGE SAINSOT: Okay. Can we dismiss
5 Mr. Terhune?

6 MR. TOWNSEND: Actually, your Honor, we do have
7 questions that we'd like to ask of him with regards
8 to the information that we just received last night
9 in response to your ruling on the motion to compel.

10 MR. ROONEY: And, your Honor, we'd object to
11 that. There's simply to basis related to the -- to
12 conducting live supplemental direct examination on
13 this point.

14 JUDGE SAINSOT: Okay. Here's -- why don't you
15 talk to Mr. Bernstein and we'll take a break. Let's
16 start there.

17 (Recess taken.)

18 JUDGE SAINSOT: Okay.

19 JUDGE DOLAN: Back on the record.

20 JUDGE SAINSOT: Yeah. Mr. Townsend, at this
21 point, you're presenting argument.

22 MR. TOWNSEND: At this point, I like to speak

1 to the motion to compel.

2 JUDGE SAINSOT: Right. Which is argument.

3 MR. TOWNSEND: That's correct.

4 JUDGE SAINSOT: So we can excuse the witness.

5 MR. TOWNSEND: For the time being, but, though,

6 we would like to be able to recall him.

7 JUDGE SAINSOT: You're presenting argument. I

8 mean, I'm not saying you can't confer with him, but

9 you're presenting legal argument.

10 MR. TOWNSEND: At this point, we would like to

11 be able to speak to the motion. So if our witness

12 could step down with the understanding that we may

13 ask him to come --

14 JUDGE SAINSOT: Thank you.

15 MR. TOWNSEND: -- to present additional

16 testimony.

17 JUDGE SAINSOT: Thank you, Mr. Terhune.

18 THE WITNESS: Thank you. Appreciate it.

19 JUDGE DOLAN: Hm-hmm.

20 THE WITNESS: Appreciate your courtesy.

21 MR. TOWNSEND: We did -- as ComEd indicated

22 earlier, we did receive a response from ComEd to your

1 Honor's ruling with regards to the motion to compel.
2 We received that last night around 4:30. We did have
3 a chance to review that response and we don't believe
4 that it is complete as indicated earlier today.

5 We are aware of different categories
6 of documents that ComEd has in its possession, but
7 it -- and that we believe are responsive to the
8 request, but ComEd has indicated that it is not
9 intending to provide that additional information at
10 this time.

11 JUDGE SAINOT: Okay. What documents are you
12 talking about? What kinds?

13 MR. TOWNSEND: There are two categories --
14 well, actually, three categories of documents that --
15 that ComEd has.

16 The first is something referred to as
17 a service estimate request document that --
18 essentially, when someone -- when a customer says
19 that they'd like to receive service at a particular
20 location, the ComEd engineering team puts together an
21 estimate of what it is that's going to be necessary
22 in order to be able to fulfill that. And that

1 document contains additional information with regards
2 to that particular location beyond the information
3 that we received from ComEd, and that goes to the
4 issue of what nonstandard facilities are going to be
5 necessary and what standard facilities that are
6 already there to be able to serve the customer.

7 JUDGE SAINSOT: Why would there be more detail
8 in an estimate than the actual documents?

9 I mean, I'm assuming that you got
10 documents relating to -- relating to the actual
11 provision, but...

12 MR. TOWNSEND: It does contain additional
13 information about the load expectations associated
14 with the Rider NS service as opposed to just the
15 transformers. So it provides additional data
16 relevant to the Rider NS build-out that's not
17 actually contained in the list of assets, which is
18 what we did get from ComEd, which is a list of assets
19 associated with the contract. So that's one
20 category.

21 The second category is the sketch of
22 the standard versus nonstandard service. And so when

1 that request originally goes to ComEd from the
2 customer, the engineering department outlines what it
3 is that they believe the standard service is
4 associated with the facility and then the nonstandard
5 service, and that would be a graphic depiction of --
6 of that information.

7 The third piece of information --

8 JUDGE SAINSOT: Why don't you wait until the
9 ambulances go by.

10 (Pause.)

11 MR. TOWNSEND: The third piece of information
12 is access to ComEd's maps or portions of ComEd's maps
13 that describe the primary service facilities
14 associated with the Rider NS service.

15 And so they have -- as you've heard
16 from other testimony, they have different maps
17 programs that can give snapshots of different
18 locations that, again, would describe the primary
19 service facilities that are there to serve the
20 customer and how the Rider NS build-out fits within
21 that.

22 And we understand that there are --

1 there are legitimate confidentiality concerns with
2 each one of those levels of information and we're
3 willing to work with ComEd to come up with
4 appropriate protocols to be able to review each of
5 those pieces of information, including, if necessary,
6 visiting ComEd's facilities in order to be able to
7 review the maps.

8 JUDGE DOLAN: Counsel, you want to respond?

9 MR. BERNSTEIN: I don't want to go very far
10 into this. We believe we have provided the
11 information that your order provided. It was
12 provided yesterday. It took a number of people
13 working over the weekend and into this week to
14 compile the information.

15 We located documents pertaining to 45
16 facilities' rental service agreements, all pertaining
17 to Rider NS. They lay out in elaborate detail the
18 facilities associated with each of the underlying
19 projects, and they've been provided to Mr. Townsend.

20 Yes, there are always more documents
21 that one might look for; but the fact of the matter
22 is, I don't believe that you required the provision

1 of any additional documents, and I don't know what he
2 possibly could do with them. As it is, we've got a
3 subset. We've got 45 of the customers only out of a
4 57-member customer set.

5 Where is this going to go? What good
6 does it do to have 45 detailed documents, no matter
7 what level of detail you have? What do you do with
8 it? Where does it go? What does it have to do with
9 the issues in this case?

10 JUDGE SAINSOT: Mr. Townsend, tell me why you
11 can -- you are unable to determine at least with
12 these 45 out of 57 whether the extra large load
13 customers are being double-billed?

14 MR. TOWNSEND: The question is, what are the
15 standard services associated with the Rider NS, the
16 combined version of both the standard service and the
17 Rider NS.

18 What they've ended up doing by just
19 providing a portion of the documents -- and, again,
20 your ruling required all documents pertinent to
21 Rider NS concerning the extra large load customer
22 build-outs. So all of the documents associated with

1 those build-outs.

2 By excluding the different categories,
3 including the sketches, including maps and the
4 service estimate report -- or service estimate
5 request documents, they've been able to limit the
6 ability of us to be able to view the load of the
7 customer at a particular facility as well as be able
8 to better understand what the -- the actual
9 underlying standard service is for the facility.

10 JUDGE SAINSOT: Do you really need all three
11 sets of documents?

12 MR. TOWNSEND: Again, I think -- we have
13 excluded other documents, just so that you're aware.
14 There are other categories of documents that we have
15 worked with ComEd in order to be able to say these
16 particular documents with regards to the issues that
17 we're looking at are not relevant and you shouldn't
18 have -- you know, don't -- don't spend time tracking
19 those down. At this time, instead, focus on these
20 others.

21 Again, these are documents that we had
22 talked to ComEd about and we thought that they were

1 providing them. We never received a communication
2 back saying that they were not going to provide them.

3 MR. BERNSTEIN: Now, I have to object to that.
4 We're going into confidential communications. And if
5 we're going to go into those confidential
6 communications, then I'm going to have to go into
7 those confidential communications also.

8 There was an exchange of information
9 between Mr. Townsend and myself that neither of us
10 has put on the record to this point.

11 MR. TOWNSEND: Fair enough.

12 Again, just from our perspective, we
13 believe that there are additional pieces of
14 information that would be helpful and that are
15 responsive to your ruling.

16 MR. BERNSTEIN: Your Honor, the one point I
17 would observe is that they didn't begin this
18 effort until September 15th. They've been in the
19 case since -- or the case was filed on June 30th. We
20 wouldn't be in this time crunch if they asked at a
21 decent time.

22 Yes, there are maps out there. The

1 one -- and we would indicate to Mr. Townsend that if
2 -- they're highly -- what's the term -- that's the
3 term.

4 MR. RIPPPIE: Critical energy infrastructure
5 information.

6 MR. BERNSTEIN: Yeah, they are critical energy
7 infrastructure information. They are protected from
8 disclosure. They exist in maps form. It would be
9 possible for someone from REACT to come look at those
10 maps. It would take weeks. It's not something
11 that's going to possibly advance this proceeding, and
12 they were made available in the rate design
13 investigation and they never sent anybody to look at
14 them.

15 MR. TOWNSEND: Again, your Honors, what
16 happened in that proceeding is not relevant to this
17 proceeding.

18 This proceeding, by the way, on these
19 issues was delayed because ComEd did not make timely
20 filing that complied with the --

21 JUDGE SAINSOT: Oh, let's not get into that.
22 It's Friday afternoon. We're all a little --

1 MR. TOWNSEND: Them claiming that we didn't
2 start asking for information until September 15th,
3 though, is not well-taken.

4 JUDGE SAINSOT: All right. I don't want to go
5 there, okay?

6 Okay. But, Mr. Townsend, you didn't
7 ask -- answer my question, I don't think.

8 Do you need all three sets of
9 documents in order to determine whether extra large
10 load customers are being double-billed?

11 MR. TOWNSEND: Again, your Honor, the purpose
12 is not necessarily on the double-billing question,
13 but to be able to understand where it is that the
14 standard service and the Rider NS service come
15 together.

16 So I guess if that's what you're
17 talking about in terms of double-billing, it would be
18 each piece of information would be incrementally
19 better. The maps, as Mr. Bernstein has suggested,
20 that is a significant undertaking. And, perhaps,
21 within the context of this proceeding at this time,
22 we would be better served by focusing on the other

1 two categories, which we do believe that ComEd has
2 the ability to go back to its records and obtain
3 those types of -- those types of documents.

4 JUDGE SAINSOT: All right. Judge Dolan and I
5 are going to confer outside the room.

6 Is there any way you can talk about
7 the other two types of documents while we're talking?

8 MR. TOWNSEND: Yes. From my perspective, I'd
9 welcome the discussion.

10 JUDGE SAINSOT: Okay.

11 JUDGE DOLAN: All right. Let's go off the
12 record.

13 JUDGE SAINSOT: We've already narrowed a third
14 down.

15

16

17

18 (Change of reporters.)

19

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21

22

1 JUDGE SAINSBOT: Okay. Anything agreed to?
2 Worked out.

3 MR. TOWNSEND: We did agree that the response
4 that we received last night could be admitted into
5 the record as a confidential exhibit.

6 MR. BERNSTEIN: I'm not sure it even needs to
7 be confidential.

8 MR. TOWNSEND: I think it does.

9 MR. BERNSTEIN: I think it's all redacted,
10 isn't it?

11 MR. TOWNSEND: You actually did serve it as
12 confidential.

13 So, again, we're open to those
14 discussions as well, but that doesn't satisfy our
15 additional -- our request for the additional
16 information.

17 JUDGE DOLAN: Well, I guess my first question
18 concerning -- what are you going to do with the
19 information at this point. Because we are not going
20 to allow additional direct by your witness. And your
21 rebuttal's already been filed so I don't know where
22 we're going to be able to use this information going

1 forward.

2 MR. TOWNSEND: There is precedent at the
3 Commission allowing live testimony based upon
4 additional information that was provided in discovery
5 on the eve of the hearings. And so that's our
6 preferred route, is to be able to allow for a witness
7 to speak to the discovery request that, frankly,
8 should have been provided early on in the process
9 here. And, again, if you roll back the clock as to
10 when it is that the discovery was first issued, I
11 believe that we should have had this discovery in a
12 timely fashion to be able to include --

13 JUDGE SAINSOT: Yes, but you brought it to our
14 attention kind of late. That's the problem.

15 MR. TOWNSEND: I understand, your Honor. The
16 issue -- these documents -- again, I understand this
17 is all kind of getting blended together, but these
18 documents actually also are responsive to that second
19 set of data requests that were involved with that
20 petition for interlocutory review that's on the --

21 JUDGE SAINSOT: I know. They're all related.

22 MR. TOWNSEND: They are all --

1 JUDGE SAINSBOT: I mean, they may not be all the
2 same thing, but they're all -- they all seem to be
3 going in the same direction.

4 MR. TOWNSEND: That's right. And so we've been
5 trying to bring this to the Commission's attention
6 and to be able to get this information for quite some
7 time once we understood that this portion of the case
8 was going forward.

9 We believed that we have been diligent
10 in trying to get that -- get that information. And
11 in order to be able to provide a complete record for
12 the Commission on the issue we have taken some
13 extraordinary steps to be able to take that
14 information that we received about 24 hours ago, get
15 it to our expert witness and allow him to provide
16 some analysis that we think will benefit the record
17 and benefit the Commission in understanding how that
18 information is important to the testimony that he's
19 provided.

20 If we were able to get additional
21 information -- again, further additional information
22 today based upon a ruling today, we, likewise, would

1 like to be able to present Mr. Terhune to be able to
2 put that into context. But today he can speak to the
3 information that we've been provided so far and can
4 put that into context and explain why it's important
5 to the issues that we've received. And he can also
6 speak to the information that's out there in those
7 other categories and why that would help us in order
8 be able to explain the issue to the Commission.

9 MR. BERNSTEIN: Your Honors, I'd just like to
10 note for the record that the information that we're
11 talking about is completely unrelated to the
12 supplemental direct testimony that was filed on
13 August 20th. If it's relevant to any issue in this
14 case, it was relevant on June 30th when the tariffs
15 were filed. At that time the Company proposed, and
16 there always has been, an extra-large-load customer
17 class.

18 JUDGE SAINOT: I understand.

19 MR. BERNSTEIN: And to any extent that
20 Mr. Townsend is trying to examine the costs to serve
21 the extra-large-load customer class, this information
22 has always been at issue in this case.

1 JUDGE SAINSOT: All right. Let me ask you
2 this, Mr. Townsend: Are you totally precluded from
3 an analysis of whether there's a double billing?
4 MR. TOWNSEND: And, again, we phrase the issue
5 differently, an analysis of the standard versus the
6 nonstandard --
7 JUDGE SAINSOT: Right.
8 But that -- the ultimate yield is the
9 double billing issue?
10 MR. TOWNSEND: Again, I think that for our
11 purposes it's a question of the allocation of the
12 costs and not necessarily a -- you know, what you
13 would typically think of as a double billing --
14 JUDGE SAINSOT: I understand that, but --
15 because it's a gross allocation. It's -- yeah, I
16 understand that it's an allocation issue.
17 MR. TOWNSEND: Are we entirely precluded based
18 on the information? Again, each piece of information
19 is helpful to being able to provide the picture to
20 the Commission as to what it is that we believe
21 should be part of the study that ComEd is required to
22 do with regards to those assets and identifying the

1 standard and nonstandard assets. Having these types
2 of pieces of information we'll be able to better
3 illustrate what it is that ComEd has so that it can
4 put together the type of analysis that we're asking
5 for and it shows the viability of being able to put
6 together that type of analysis.

7 JUDGE SAINSOT: So is that a "no"?

8 MR. TOWNSEND: We still can make arguments, but
9 we don't have the complete picture. And these are
10 two components that are important components to show
11 the standard versus nonstandard service. And they
12 illustrate things very well for the Commission I
13 think in both cases.

14 Your Honor, just one additional
15 point --

16 JUDGE SAINSOT: Well, how are you going to put
17 Mr. Terhune on right now? This is brand-new
18 evidence. Nobody's had time to look at it.

19 MR. TOWNSEND: He did look at it all last night
20 and this morning.

21 JUDGE SAINSOT: I know Mr. Terhune did, but
22 what about everyone else in the room?

1 MR. TOWNSEND: Well, ComEd -- it's ComEd's
2 information. I think if --
3 JUDGE SAINSOT: Well, it's still -- you know,
4 there's such a thing as notice and an opportunity to
5 be heard.
6 MR. TOWNSEND: We're happy to file supplemental
7 written testimony, your Honor.
8 MR. BERNSTEIN: Your Honor, I've never heard of
9 such an offer at this stage in a proceeding. But if
10 there's any standard for such an offer, I'd doubt
11 that Mr. Townsend has begun to satisfy it.
12 MR. TOWNSEND: This was done in the Peoples
13 rate case, your Honor.
14 MR. SKEY: The last Peoples rate case.
15 JUDGE SAINSOT: Right. I don't know anything
16 about the Peoples rate case.
17 MR. BERNSTEIN: The only thing I would point
18 to, your Honors, is the ruling of the Commissioners
19 themselves. We have the transcript before us. We
20 have quoted it to you before that this sort of
21 analysis is not what the Commission seeks in the rate
22 design aspects of this case. It is not looking to

1 compile the cost of service from the bottom up, that
2 is looking to see the cost to serve individual
3 customers.

4 JUDGE SAINSOT: I thought we made this pretty
5 clear that this issue is different.

6 MR. BERNSTEIN: It's the same issue. It's the
7 identical issue.

8 JUDGE SAINSOT: No, it's not. And I thought we
9 made that clear in our ruling.

10 I'm not saying that the Commission
11 didn't say no -- that the Commission didn't say very
12 strongly that no analysis or no service study or no
13 study is needed. But what he's asking for is just
14 documents. That's different.

15 MR. BERNSTEIN: No, it's this exact issue that
16 was before the Commission. They were seeking
17 documents in the rate design investigation when the
18 matter went up for review to the Commission. And the
19 Commission said, No, you can't have the documents.
20 It's not -- they're not relevant to any issue in the
21 case.

22 MR. TOWNSEND: That's -- I think that's a

1 mischaracterization of the Commission's order and
2 that, your Honor, has the appropriate understanding
3 of what the Commission had ordered with regards to
4 individualized cost of service studies.

5 We are asking for the background
6 documents -- the hard documents that we now know
7 ComEd has in its possession so that we can provide
8 the analysis of those documents and not have ComEd
9 provide that in response to the -- your ruling is
10 specifically with regards to documents. It isn't
11 forcing them to perform any kind of study at all.
12 You know, again, regardless of whether we think that
13 we're entitled to something a little bit more or not,
14 your ruling said that they have to provide all
15 document pertinent to Rider NS. They have not filed
16 a petition for interlocutory review with regards to
17 that. Instead they've said that they're going to
18 respond to that and the response that they have does
19 not comply with your ruling.

20 MR. ROONEY: Your Honor, John Rooney, for
21 ComEd.

22 If you look at the petition for

1 interlocutory review that I showed Mr. Terhune and
2 which I gave you copies of and if you look at the
3 pages of REACT's petition and what they bolded as to
4 what they were seeking, they were seeking information
5 about specific equipment so that they could go
6 forward and review that. And that is exactly what is
7 being asked for here.

8 JUDGE SAINSOT: Right, but that's not what the
9 Commission -- that's not what the Commission ruling
10 said.

11 MR. ROONEY: No. No. No. The Commission
12 denied the petition for interlocutory review. I'm
13 not talking about the order now. I'm talking the
14 rejection of the petition for interlocutory review
15 and the actual transcript from the Commission's
16 ruling in relationship to that issue.

17 MR. TOWNSEND: The idea that that ruling
18 somehow ties your hands forever for -- first of all,
19 it's already ruled upon in this case. You guys --
20 pardon me -- your Honors have issued a ruling in this
21 case on this issue. And so to go back and reargue
22 the motion to compel now isn't productive.

1 The question is -- they now have
2 admitted that they have not complied with that by
3 providing all of the documents with regards to the
4 Rider NS build-outs.

5 MR. ROONEY: And that's entirely incorrect. We
6 have provided the information we have regarding the
7 NS.

8 What they're asking -- your ruling,
9 and I think it was reflected in our -- in the request
10 it was stated and we pulled it from the transcript,
11 to provide all documents pertinent to Rider NS
12 concerning extra-large-load customer build-outs. And
13 the Company went and engaged in that exercise.

14 MR. TOWNSEND: And there's -- again, there's no
15 reason why a service estimate request is not a
16 document pertinent to the Rider NS build out.
17 There's no reason why a sketch of the standard versus
18 the non- -- the standard versus the nonstandard
19 service is not a document that's pertinent to the
20 Rider NS build-out. Those are two documents that are
21 always produced with regards to these that they have
22 in their possession.

1 JUDGE SAINCOT: Okay. Let me ask you this:
2 Are there any remaining ComEd witnesses that haven't
3 been admitted into the record that deal with the
4 extra-large load?
5 MR. TOWNSEND: It's actually Mr. Alongi and
6 that was where I was going to go also is that
7 certainly he will be able to answer questions with
8 regards to this. And I assume he's the one that's
9 going to sponsor this response to the Administrative
10 Law Judge's Data Request.
11 MR. BERNSTEIN: That's true.
12 JUDGE SAINCOT: Well, I'm sorry, Mr. Townsend.
13 I wish you'd started this a little sooner. It's just
14 too late to -- it's just too late to be going
15 anywhere with these documents on a substantive case
16 level.
17 However, having said that, you're
18 certainly not precluded from using what information
19 that you have -- that is in your possession now to
20 cross-examine Mr. Alongi or anybody else that you
21 want and develop your case through cross-examination.
22 Certainly talented lawyers have done that before.

1 So I guess your motion to enforce the
2 motion to compel, whatever you want to call it, is
3 denied. But, again, I want to make it clear that
4 you're not precluded from developing whatever
5 evidence you have gained from ComEd and using that
6 evidence in cross-examination.

7 MR. TOWNSEND: Your Honor, may I make an offer
8 of proof with Mr. Terhune so that the record is
9 complete with regards to the information that we'd
10 like to be able to present?

11 JUDGE SAINSOT: I never heard of an offer of
12 proof on a motion to compel, but why not?

13 MR. TOWNSEND: We'd like to re-call Mr. Terhune
14 to the stand, please.

15 MR. RIPPPIE: Your Honor, if I may, and I'm a
16 great proponent of offers of proof. So please take
17 that into account.

18 There are two ways to make an offer of
19 proof and this is the -- I'm sorry. There are two
20 ways to make a legitimate offer of proof and this is
21 the long and complicated one. The short and
22 efficient one is for counsel to represent for the

1 record what counsel believes the witness would
2 testify to if the witness were allowed to enter into
3 that testimony.

4 And my suggestion would be that rather
5 than, in fact, doing what we just decided we weren't
6 going to do because we won't be in a position to make
7 any sort of cross-examination of the offered witness,
8 Mr. Townsend make a statement for the record as a
9 profer of what Mr. Terhune would testify to if he
10 were permitted to testify.

11 MR. TOWNSEND: I don't believe -- again, your
12 Honor, I believe that we're entitled to be able to
13 make this offer of proof by presenting that
14 testimony.

15 JUDGE SAINSOT: I don't know that there are
16 grade levels of offers of proof. They all have the
17 same merit in the eyes of the Commission and the
18 Appellate Courts. So let's do it the short way,
19 please.

20 MR. TOWNSEND: Your Honor, I would request the
21 opportunity to be able to make that offer of proof in
22 writing if that's the way that you would prefer.

1 Again, I am not an expert on these
2 issues and we just received the information yesterday
3 at 4:30. So for ComEd to suggest that I am capable
4 of being able to fully describe that information and
5 present that analysis I think is a little bit of a
6 stretch even for me.

7 JUDGE SAINSOT: Any response by ComEd just for
8 the record?

9 MR. RIPPPIE: If Mr. Townsend represents that
10 he's unable to say what the substance of the
11 testimony would be, I don't see any particular reason
12 why it's prejudicial if he has time to figure it out
13 and submit it.

14 JUDGE DOLAN: All right. And with that --

15 MR. TOWNSEND: So what we'll plan on doing is
16 providing written -- if you allow us, your Honor,
17 we'll plan on filing a written document that is in a
18 question and answer form --

19 MR. RIPPPIE: No. No. No. That's not what I
20 suggested at all. This is a proffer of the substance
21 of the testimony. This is -- I did not -- at least I
22 did not suggest this was an excuse to go back and

1 write what would have been supplemental direct
2 questions in Q and A form. The purpose of the offer
3 of proof is to preserve an issue for subsequent
4 appellate review.

5 JUDGE SAINSOT: Right, what your witness would
6 you testified to in a very general sense. You
7 believe that if your witness would have been called
8 and sworn under oath, he would have testified that
9 there were certain kind of documents and that those
10 document would be useful to prove, yadda, yadda,
11 yadda, and that's -- and then that's it pretty much.

12 MR. TOWNSEND: As you wish, your Honor. Again,
13 for a complete record given that -- the objection
14 that I'd heard was his concern about timing and not
15 having time today to be able to do that. I didn't
16 understand his concern to be that he was concerned
17 that we would have a more complete record.

18 MR. RIPPIE: I'm not concerned about the
19 completeness of the record.

20 MR. TOWNSEND: And, frankly, I am concerned
21 about the completeness of the record, and that's why
22 we offered to be able to present --

1 JUDGE SAINSBOT: Then you can have a detailed
2 section on the yadda, yadda, yadda part. I'm sure
3 that was in Black's Law Dictionary somewhere.

4 MR. TOWNSEND: We'll work on that section, your
5 Honor. Thank you.

6 JUDGE DOLAN: All right. Thank you.

7 One more witness today, Mr. Born.

8 (Witness sworn.)

9 MS. SCARSELLA: Your Honors, I don't believe an
10 appearance was entered on my behalf today. On behalf
11 of Commonwealth Edison Company, Carla Scarsella of
12 the law firm of Rooney Rippie & Ratnaswamy at 350
13 West Hubbard, Suite 430, Chicago, Illinois 60654.

14 MR. GOWER: I'd like to put my appearance on
15 the record as well, Ed Gower, Hinshaw & Culbertson,
16 400 Ninth Street, Suite 200, Springfield, Illinois
17 62701 representing Metra.

18 Thank you for your indulgence.

19

20

21

22

1 MICHAEL BORN,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY
6 MS. SCARSELLA:
7 Q Mr. Born, would you state your name for the
8 record, please.
9 A My name is Michael Born.
10 Q And before you you have your rebuttal
11 testimony that has been identified as ComEd
12 Exhibit 34.0, 34- -- with Attachments 34.1 and 34.2.
13 Was this testimony prepared by you or
14 on your behalf?
15 A Yes.
16 Q Do you have any additions or corrections to
17 this testimony?
18 A Other than what is in the surrebuttal
19 testimony, I have no -- no corrections to Exhibit 34.
20 Q If I were to ask you the same questions
21 today as asked in the testimony, would your answers
22 be the same?

1 A Yes, they would.

2 Q Is the information true and correct to the
3 best of your knowledge?

4 A Yes.

5 Q Also before you are -- is your surrebuttal
6 testimony, which has been identified as ComEd
7 Exhibit 67.0 revised with Attachments 67.1 revised
8 and 67.2.

9 Was this testimony prepared by you or
10 under your direction and control?

11 A Yes.

12 Q Do you have any additions or corrections to
13 this testimony?

14 A No.

15 Q If I were to ask you the same questions
16 today as are asked in your testimony, would your
17 answers be the same?

18 A Yes, they would.

19 Q Is the information true and correct to the
20 best of your knowledge?

21 A Yes.

22 MS. SCARSELLA: Your Honors, at this time I'd

1 like to move into the record ComEd Exhibit 34.0 with
2 Attachments 34.1 and 34.2 and ComEd Exhibit 67.0
3 revised with Attachments 67.1 revised an 67.2.

4 JUDGE DOLAN: Any objections?

5 JUDGE SAINSOT: Okay. Hearing none, your
6 motion is granted, Counsel, and ComEd Exhibits 34.0,
7 34.1 and 34.2 and 67.0 revised 67.1 revised and 67.2
8 are admitted into evidence.

9 (Whereupon, ComEd Exhibit
10 Nos. 34.0, 34.1, 34.2, 67.0
11 revised, 67.1 revised and 67.2
12 were admitted into evidence.)

13 MS. SCARSELLA: Mr. Born is tendered for
14 cross-examination.

15 CROSS-EXAMINATION

16 BY

17 MR. STRONG:

18 Q Good afternoon, Mr. Born. My name is
19 Michael Strong. I'm here on behalf of REACT, the
20 Coalition to Request Equitable Allocation of Costs
21 Together.

22 Mr. Born, before we begin it may be a

1 little easier -- I'm sorry to do this to you, but if
2 you could turn your table slightly. I'm going to put
3 a chart up there, and this will -- maybe slightly
4 easier for you to look at me, too, without craning
5 your neck.

6 A Okay.

7 Q Is that better?

8 A Sure.

9 Q Okay. Mr. Born, are you familiar with
10 REACT?

11 A I'm aware that they are an intervenor in
12 ComEd's rate case. I'm not -- I don't have a lot of
13 details about their organization, but I'm aware that
14 they're an intervening group.

15 Q Were you aware that REACT is made up of
16 some of the largest commercial industrial municipal
17 entities in Northern Illinois along with RESs that
18 that are interested in potentially serving
19 residential customers?

20 A Yes.

21 Q You're the principal engineer in the
22 Distribution Capacity Planning Department at ComEd?

1 A I am a principal engineer.

2 Q A principal engineer.

3 A Yes.

4 Q In that role as a principal engineer, is it
5 your role to -- strike that.

6 In that role you are the subject
7 matter expert in the area of distribution capacity
8 planning and distribution system analysis?

9 A Yes.

10 Q And you lead the activities of professional
11 engineers and planners and projects involving
12 improvement of business processes, optimization of
13 distribution planning performance, enhancement of
14 analysis tools and training of capacity planners?

15 A That's correct.

16 Q You also direct the work of two senior
17 engineers who perform distribution system analysis
18 company-wide?

19 A Yes.

20 Q Okay. Now, Mr. Born, you sponsored
21 distribution loss studies in your rebuttal and
22 surrebuttal testimony; is that correct?

1 A That's correct.

2 Q And those distribution loss studies are
3 marked as ComEd Exhibits 34.1, 34.2, 67.1 and 67.2;
4 correct?

5 A That's correct.

6 Q And just to --

7 MS. SCARSELLA: Just to clarify, 67.1 was
8 revised.

9 MR. STRONG: Thank you.

10 BY MR. STRONG:

11 Q With that change, the distribution loss
12 studies are 34.1, 34.2, 67.1 revised and 67.2?

13 A Those are the reports of the loss studies,
14 yes.

15 Q Okay. And each successive version of the
16 distribution loss study contained revisions; correct?

17 A Yes.

18 Q Could you please turn to Appendix B to
19 ComEd Exhibit 34.1.

20 A I have that in front of me.

21 Q That contains a single-page diagram
22 labeled, 2009 Loss Factors Simplified System

1 Resistance Model; correct?

2 A That's correct.

3 Q I'm going to represent to you that this is

4 a blowup of that single-page diagram. Okay?

5 A It looks pretty close.

6 Q Can you see the diagram, Mr. Born?

7 A Yes, I can.

8 Q Do you need to move -- do you need us to

9 move it at all?

10 A As long as it's the same as what's in front

11 of me, I just prefer to refer to that unless there's

12 some other reason.

13 Q Very well.

14 Now, just to be clear, as I mentioned,

15 ComEd submitted multiple versions of the distribution

16 loss study; correct?

17 A That's correct.

18 Q But in each version, Exhibits 34.1, 34.2,

19 67.1 revised and 67.2, Appendix B is the same

20 one-page chart; correct?

21 A That is correct.

22 Q If I refer to this as Appendix B, will you

1 understand it to be the same Appendix B as in all of
2 the distribution loss studies?

3 A Yes.

4 Q Okay. Please look at Exhibit 34.1, Page 2.

5 JUDGE SAINSOT: That's to the ComEd testimony?

6 MR. STRONG: Yes, to Mr. Born's testimony, your
7 Honor.

8 THE WITNESS: Just to confirm, you said Page 2
9 of Exhibit 34.0?

10 MR. STRONG: Correct.

11 THE WITNESS: I'm looking at it.

12 BY MR. STRONG:

13 Q And, please, look at the paragraph
14 entitled, Study Approach. The first sentence says,
15 Distribution losses were calculated using a
16 simplified resistance model of the elements that are
17 used to deliver energy from the transmission system
18 to customers; is that right?

19 A That's correct.

20 Q The simplified resistance model referred to
21 in that sentence is represented in Appendix B;
22 correct?

1 A Yes.

2 Q So this is what we're looking at in the
3 charts and that you're looking at in Appendix B;
4 right?

5 A Correct.

6 Q So in other words, according to that
7 passage on Page 2 and for the purposes of calculating
8 distribution losses, the simplified resistance model
9 represents assumptions about the distribution assets
10 used to serve customers; is that right?

11 A The loss study takes into account these
12 elements of the distribution system. So I guess -- I
13 don't know. Would you restate your question?

14 Q Absolutely.

15 According to the passage on Page 2
16 that we just read and for the purposes of calculating
17 distribution losses, the simplified resistance model
18 represents assumptions about the distribution assets
19 used to serve the customers represented by the Cs on
20 that chart; is that right?

21 A Well, I would say that this diagram is
22 consistent with that sentence, yes. There are other

1 assumptions that were made, but this is not the only
2 assumption.

3 Q Fair enough.

4 But that is --

5 A They're certainly consistent with each
6 other.

7 Q Okay. But would you -- is it fair to say
8 that that's one of the assumptions that went into the
9 distribution loss?

10 A Yes.

11 Q All right. So as we just went over in the
12 last question, the boxes labeled C, those represent
13 customers; is that correct?

14 A That's correct.

15 Q Is it fair to say that if you traced a line
16 from the box labeled "generation and transmission"
17 labeled as Box 20 to a particular box labeled "C,"
18 that represents the flow of electricity through the
19 delivery system to that customer?

20 A In general, yes, or to -- to the type of
21 customer -- or, yes, to all customers. That's true.

22 Q To be clear, for some of the boxes labeled

1 "C" there are multiple ways to trace a line from the
2 customer to generation and transmission; is that
3 right?

4 A That's correct.

5 Q So for some customers there are multiple
6 ways in which electricity could flow through the
7 delivery system to that customer under these
8 assumptions?

9 A Yes, another way to put it would be that
10 different elements of the system are used to serve
11 various customers in the same category.

12 Q Okay. In order for the simplified
13 resistance model to be useful, it would have to be an
14 accurate representation of the typical assets used to
15 serve the customers represented here; is that right?

16 A That is the intent, yes.

17 Q Mr. Born, are you familiar with the terms
18 "standards service" and "required service"?

19 A Yes.

20 Q And is it your understanding that standard
21 service is used to refer to how ComEd typically would
22 provide service to a customer?

1 A No, I would disagree with that.

2 MR. STRONG: May I approach, your Honor?

3 JUDGE SAINSOT: (Nonverbal response.)

4 MR. STRONG: Now, I would like to mark this

5 exhibit REACT 21.

6 (Whereupon, REACT Exhibit No. 21

7 was marked for identification.)

8 BY MR. STRONG:

9 Q Mr. Born, have you had a chance to review

10 this exhibit?

11 A No.

12 Q Please take a minute.

13 A Is there a particular section that you want

14 me to --

15 Q Well, perhaps we can speed this up a little

16 bit in the interest of it being almost 5:00 on

17 Friday.

18 May I direct your attention to the

19 paragraph -- or I guess the passage that says, quote,

20 A standard distribution facilities installation

21 provided by the Company for retail customer includes

22 distribution facilities adequate to provide at a

1 single delivery point the electric power and energy
2 required by such a customer.

3 Did I read that correctly?

4 A Yes, you did.

5 Q Are you familiar with that passage?

6 A Yes.

7 Q Would you agree that among ComEd engineers
8 facilities satisfying that description would be
9 standard service -- known as standard service?

10 A Yes, this is a good definition of standard
11 service.

12 Q Okay. Is it your understanding that
13 required service is the service that ComEd provides
14 to meet a customer-specific and particular needs is
15 they differ from standard service?

16 A Yes.

17 Q Would you agree that the simplified
18 resistance model reflects the typical collections of
19 assets that would be used to provide standard service
20 to the customers represented?

21 A The intent of this diagram is to convey how
22 actual customers are served for the predominate way a

1 customer in a particular class is supplied. So this
2 model does not -- it's not intended to capture all
3 the ways that a customer -- a particular type of
4 service receives services, but it's the typical way
5 that the customer in that category would be supplied.

6 Q Am I understanding you correctly that it
7 would be a fair assumption that this would be what a
8 normal customer or typical customer would be served
9 by?

10 A Right. I wouldn't -- I mean, I wouldn't
11 say that this is necessarily standard service, but
12 it's the typical way that customers in these
13 categories are provided service.

14 Q Thank you -- I'm sorry. I was about to
15 thank you, but -- I still thank you, but I'm going to
16 ask a couple more questions.

17 All right. You know what, I will
18 thank you.

19 MR. STRONG: No further questions.

20 JUDGE DOLAN: Thank you.

21 Mr. Balough.

22 Are we putting REACT 21 into the

1 record?

2 MR. TOWNSEND: I don't think that's necessary.

3 JUDGE DOLAN: Okay.

4 CROSS-EXAMINATION

5 BY

6 MR. BALOUGH:

7 Q Good afternoon, Mr. Born. My name is
8 Richard Balough, and I represent the Chicago Transit
9 Authority.

10 And you provided some testimony here
11 today in your prefiled testimony concerning
12 Mr. Rockrohr's suggestions or recommendations -- I'm
13 not quite sure how to classify them -- concerning the
14 traction power substations; is that correct?

15 A Yes.

16 Q And one of your recommendations is -- or at
17 least you appear to agree with Mr. Rockrohr that over
18 the long term that there might be modifications made
19 to the traction power substations so that ComEd does
20 not use the facilities of either the CTA or Metra; is
21 that correct?

22 A Yes, I agreed that in the long run it would

1 be best for ComEd not to rely on the railroad
2 customers' equipment to provide service to other
3 customers.

4 Q Would it be fair to say that one of the
5 reasons it needs to be done in the long run is that
6 there's a cost incurred to -- first of all, to ComEd
7 to change circuits to be able to serve, for example,
8 the CTA's traction power substation -- traction power
9 needs at a particular substation?

10 A I guess just to put it in context, I
11 understood Mr. Rockrohr's position to be that there
12 should be a plan developed -- a specific plan over a
13 definite time period to phase out the post blue
14 configuration.

15 And my recommendation is that although
16 it's desirable, having a fixed schedule would be
17 burdensome on ComEd as well as on the railroad
18 customers to implement something unless it were done
19 as part of some other -- if there were some other
20 reason to take action at a particular railroad
21 substation, it would make sense to make that
22 configuration change at that time.

1 But arbitrarily embark on a program to
2 reconfigure service to these 70- some substations
3 would be costly for ComEd, the railroad customers
4 and, frankly, not result in a great improvement of
5 service.

6 Q So in other words -- and not to belabor --
7 belabor the point, but some of these attraction power
8 substation is -- just for the record, a place where
9 ComEd delivers power -- and I'm going to use the CTA
10 since it's my client -- to the CTA to serve traction
11 power which is the power that powers the transit
12 cars; is that correct?

13 A Yes.

14 Q And some of these facilities traction power
15 substations have been in place for at least decades?

16 A Many years, yes.

17 Q And some of those traction power
18 substations, for example, are located here in the
19 Loop area?

20 A Yes.

21 Q And unless, for example, the CTA is
22 embarked on a major reconstruction of a substation,

1 there would be no operational reason to go in and
2 change the ComEd circuits to those substations, would
3 that be correct?

4 MR. FEELEY: Sorry. Could you clarify in terms
5 of operational, whose operations are you talking
6 about? CTA or ComEd's?

7 MR. BALOUGH: We'll start with ComEd's.

8 THE WITNESS: Yeah, I would agree there's --
9 there is no significant operational advantage to
10 doing this reconfiguration.

11 BY MR. BALOUGH:

12 Q For example, their -- and for the CTA to go
13 to -- for a traction power substation the general
14 configuration is that ComEd provides service at --
15 through two different circuits; is that correct?

16 A Yes.

17 Q And if the substation were to -- traction
18 power substation would be changed from what is
19 operating now as a closed-loop to an open-loop
20 configuration, there most likely would be
21 modifications that would have to be made to both
22 circuits; is that correct?

1 A It depends on -- in some cases ComEd would
2 need to make changes to its system. In other
3 locations it would not. But overall the -- across
4 the board there would have to be some changes made,
5 you know, if all were to be changed, but not
6 necessarily on a one-by-one basis.

7 Q And to date, ComEd has not done an analysis
8 as to how much, if you were going to go in and change
9 all of the CTA traction power substations to operate
10 in an open-loop configuration, what that total cost
11 would be to ComEd, have you?

12 A We did make -- a preliminary estimate was
13 made as part of the power flow study that was done
14 between the railroads and ComEd. During that study I
15 believe there was a data request that the Staff had
16 asked about that and ComEd responded that we had a
17 preliminary estimate of about \$2.1 million of
18 reinforcement to ComEd's system that would be
19 required to move to open-loop configuration if all
20 railroad substations were converted to that mode.

21 Q So it's your testimony that to convert, for
22 example, in terms of the CTA, all 57 substations that

1 are currently operated in the closed loop, that the
2 entire cost would be \$2.1 million?

3 A The 2.1 covered the 71 total substations
4 between Metra and CTA. I don't have any kind of a
5 breakout about the CTA alone.

6 Q What equipment would have to be changed
7 to -- on a particular circuit in order to get it to
8 the level that each circuit could independently serve
9 a station?

10 A What ComEd would do would be to reconfigure
11 those circuits basically to bring the connection to
12 the railroad substation to a different point on the
13 feeder or to perhaps bypass part of the feeder simply
14 to get a load off of some portion of the feeder so
15 that there was adequate capacity for the other
16 circuit being out of service.

17 So it's basically the expenditures
18 would be for more cable -- typically underground
19 cable to essentially provide circuits that had
20 adequate capacity at those substation.

21 Q And some of those underground cables are
22 located -- for example, would be located in the Loop?

1 A Yes.

2 Q And that would involve -- would that
3 involve considerable amount of construction to run
4 new cables to the substations?

5 A I mean, running cable is -- I mean, the
6 cable itself is costly. There's a matter of in some
7 cases we might have to install additional conduit
8 where the cable resides. There are costs in terms of
9 splicing and cleaning out the manholes so our craft
10 people can work in there, but it's customary. ComEd
11 does this sort of work all the time.

12 Q Right.

13 And ComEd did that sort of work, for
14 example, when Block 37 was being reconfigured; is
15 that right?

16 A At a very large scale, yes.

17 Q And what -- do you know what the cost was
18 to change those circuits?

19 A I'm not aware of that.

20 Q Is it your testimony that it would be less
21 than -- I guess, if we take the \$2.1 million and
22 divide it by 71 substations, are you saying it costs

1 less than \$100,000 to reconfigure Block 37
2 substations?

3 A Again, I'm not -- I know that it was -- the
4 relocation for Block 37 was quite costly, but I don't
5 know what the total amount was.

6 Q But would it surprise you that it was in
7 the figure of \$7 million?

8 MR. FEELEY: Objection. This witness -- he
9 has -- there's no foundation for the question. He
10 said he doesn't know.

11 MR. BALOUGH: Your Honor --

12 MR. FEELEY: Now Mr. Balough's just testifying.

13 MR. BALOUGH: Your Honor, he says that the
14 total cost for all 71 substations is \$2.1 million.
15 I'm just testing his knowledge as to whether or not
16 that is, in fact, a valid number.

17 THE WITNESS: You know, I could refer you to
18 our response.

19 MR. BALOUGH: There's no question -- I'm sorry.

20 THE WITNESS: Staff Data Request --

21 JUDGE SAINSOT: Hold on. The objection is
22 sustained.

1 If you can tie that figure that you
2 used, Mr. Balough, up with something in reality,
3 that's fine. But just to throw a number out there is
4 not fair.

5 BY MR. BALOUGH:

6 Q Let's start with Block 37.

7 You said there were changes to
8 underground cable there; is that correct?

9 A In Block 37?

10 Q Yes.

11 A I have a very general understanding that
12 there were cables in Block 37 and ComEd had to
13 relocate those cables.

14 Q And do you know what the cost per thousand
15 feet, say, for example, is to replace underground
16 cable --

17 MS. SCARSELLA: I'm going to object at this
18 point. Asked and answered. Mr. Born has stated his
19 extent of his knowledge concerning Block 37. I'm not
20 sure if he has any --

21 JUDGE DOLAN: Sustained.

22 BY MR. BALOUGH:

1 Q Can you tell me what steps you took to
2 determine that the \$2.1 million to which you
3 testified to, how did you come up with that number?

4 A I relied on the work of the Staff that did
5 the power quote study. And I can tell you that the
6 estimate -- the description of how the estimate was
7 reached is in the response to Data Request GER 2.07.

8 But in general the method was a
9 detailed examination of the supply to 24 of the 71
10 substations was made and of those 24 substations
11 reinforcement work was required on the feeders for 2
12 of those substations. And that was the -- that work
13 was estimated to be a little under \$700,000.

14 So going from a scale of 24 to the
15 total of 71 substations, the two substations that
16 needed reinforcement work were scaled up to 12 and
17 multiplied the \$700,000 factor by 3, which is the
18 same ratio of the -- basically the 24 to 71. And
19 that's where the 2.1 million came from. It's a very
20 preliminary eye level estimate. It's not detailed
21 and it's not based on a comprehensive study of all
22 those sites. But we think it's realistic based on

1 what we found on the smaller sample.

2 Q And of the two substations that you looked
3 at in this study, how much were located, for example,
4 in the Loop?

5 A I can't tell you. I'm not sure which --
6 where those two substations were.

7 Q Do you know how far the feeds were on those
8 two substations?

9 A No, I don't.

10 Q Would you agree with me that for traction
11 power substations for the CTA that the distance from
12 a feed to a traction power substation can vary by a
13 factor of miles?

14 A Just to clarify, you're talking about the
15 distance between ComEd's substation and the
16 railroad's substation?

17 Q Yes.

18 A It could be up to miles, yes.

19 Q And that would have some impact on what the
20 total cost would be to reinforce a circuit, would it
21 not?

22 A Yes.

1 Q You did not undertake any study to
2 determine what the cost would be to the CTA to
3 reconfigure the buses on the CTA side of the point of
4 delivery, did you?

5 A No.

6 Q And of the cost that you're talking about
7 that -- to reinforce the circuits, is that a cost
8 that would be charged to the railroad class through
9 Rider NS, do you know?

10 A I don't know.

11 Q Have you worked with preparing estimates
12 for the substation -- the CTA traction power
13 substation work that was done on the Brown Line?

14 A You know, I -- not directly. I'm aware
15 that it's been done, but I wasn't directly involved
16 in those.

17 Q And are you aware that on the Brown Line
18 that there were some -- that the CTA added new
19 traction power substations?

20 A Yes.

21 Q Do you have -- do you know what the cost
22 was to provide the circuits to these new substations?

1 A No, I don't.

2 Q You mention I believe in your testimony
3 that four of the CTA traction power substations now
4 operate in the open-loop configuration; is that
5 right?

6 A I believe it is two. There are two CTA
7 substations.

8 Q And are these the two newest CTA
9 substations?

10 A I know of one in Evanston that is not new,
11 and I don't know where the other one is.

12 Q Do you know when the CTA rebuilt the Brown
13 Line and put in a new traction power substation, is
14 that new traction power substation operated in a
15 closed-loop or open-loop configuration?

16 A I believe it's in closed loop. I believe
17 it's closed-loop configuration.

18 MR. BALOUGH: I have no other questions. Thank
19 you.

20 JUDGE DOLAN: Thank you.

21 JUDGE SAINSOT: Mr. Gower.

22 MR. GOWER: Just a couple quick questions.

1 CROSS-EXAMINATION

2 BY

3 MR. GOWER:

4 Q In response to Mr. Balough's question about
5 Block 37 you said it would be quite -- your
6 understanding was that it was quite costly to
7 reconfigure that substation. Can you put some -- can
8 you quantify what you meant by "quite costly"?

9 A Well, I understood that there were many
10 cables, at least 20 cables in that block. And that
11 ComEd was required to not only relocate the cables,
12 but to build new conduit to accommodate the cables.
13 So in addition, more than just extending cables,
14 there was a costly project to install conduit. And I
15 believe there was also some very costly construction
16 work around supporting conduits while there was
17 excavation going on at the site. So it was a very --
18 relocation of facilities, particularly in the
19 downtown area, can be very costly because there are
20 many underground structures that need to be
21 accommodated and supported during reconstruction
22 work.

1 So that was my reason for saying it
2 was very costly because of the number of circuits and
3 the scope of the work during relocation and what we
4 know to be a very expensive very -- work.

5 Q So for a Downtown substation that had to be
6 reconfigured it'd blow a hole through that \$2.1
7 million estimate, didn't it?

8 A Not necessarily. If it's a matter of
9 pulling cable through an existing conduit wrong, it's
10 not -- I don't think it's dramatically different than
11 somewhere outside the Loop. That really depends on
12 the scope.

13 Q It depends on the scope and the problems
14 that you encounter?

15 A Honestly, the 2.1 would be at the low range
16 of possibility of estimates. Certainly I wouldn't
17 say it's a high end. It would be a low end kind of
18 estimate.

19 Q And my original question to you was you had
20 said it was quite costly. And I was simply asking
21 you in terms of a dollar value if you could quantify
22 "quite costly."

1 A You know, what the cost of the Block 37's
2 new location was?

3 Q Yes.

4 MS. SCARSELLA: I'm going to object, your
5 Honor --

6 THE WITNESS: Again, I don't know what the
7 value is.

8 MS. SCARSELLA: -- he's already stated to the
9 extent that he wasn't directly involved in the Block
10 37. He describes --

11 JUDGE SAINSOT: Right. He's already said he
12 doesn't know in terms of dollars.

13 MR. GOWER: He testified "quite costly." He's
14 now testified he doesn't know. So, I mean, I -- I
15 think I was entitled to ask him about "quite costly."
16 He answered the question he doesn't know what he
17 meant by "quite costly," and I'm going to move on.

18 JUDGE SAINSOT: I know, but he also testified,
19 Mr. Gower, that -- a lot of things -- yeah, okay.
20 Let him reply.

21 JUDGE DOLAN: He's ready to move on.

22 BY MR. GOWER:

1 Q In any event, are there any -- your
2 judgment based upon your surrebuttal testimony is
3 that movement to an open-loop configuration over the
4 course of time where it's cost justified, as
5 recommended by Mr. Bachman, you think is the
6 appropriate solution to the current configuration; is
7 that correct?

8 A Yes.

9 MR. GOWER: That's all the questions --
10 BY MR. GOWER:

11 Q Well, one more question.

12 You answered a series of questions
13 that Mr. Balough asked you with respect to CTA
14 substations. Except for those instances when you
15 were referring to specific CTA substations, the
16 answer would be the same with respect to Metra
17 substations; is that correct?

18 A I agree with that, yes.

19 MR. GOWER: Thank you, Mr. Born. I'm sorry it
20 took us 10 times to try and get you down here.

21 JUDGE DOLAN: Thank you.

22 I take it Commercial Group waived. I

1 don't see Mr. Jenkins.

2 MR. GOWER: They did. Mr. Jenkins had to

3 leave.

4 MR. FEELEY: Judge Dolan, I originally didn't

5 have any time; but based upon Mr. Balough's cross, I

6 just have one question I'd like to ask Mr. Born.

7 CROSS-EXAMINATION

8 BY

9 MR. FEELEY:

10 Q Mr. Born, good evening. My name is John

11 Feeley. I'm one of the Staff attorneys.

12 Would you agree that if the Commission

13 adopted Mr. Rockrohr's recommendation for ComEd to

14 change those stations from closed loop to open loop,

15 that ComEd's system would be more reliable since it

16 wouldn't be relying upon a customer to provide

17 service to its other customers?

18 A At a very high level I would agree with

19 that, yes.

20 MR. FEELEY: Thank you. That's all I have.

21

22

1 RECROSS-EXAMINATION

2 BY

3 MR. GOWER:

4 Q At a very low level are you aware of a
5 single operational problem that has surfaced over the
6 course of the last 40 years because the -- there are
7 bus ties in the Commonwealth substation that allow --
8 excuse me -- in the Metra or CTA substations that
9 allow service to other customers?

10 A I'm not aware of any outages that
11 were to other customers that were a result of the
12 current configuration. So from a -- frankly, I don't
13 believe it's going to change any reliability
14 statistics by going from open- or closed-loop
15 configuration.

16 But, you know, I mean, I in general
17 agree with Mr. Rockrohr that it's not desirable to --
18 for ComEd to rely on a third party to provide service
19 to its customers. But from an operational point of
20 view, I don't think it's going to move the needle.

21 Q And in terms of whether or not that's
22 something that ought to be done, to your way of

1 thinking, is also a situation where you'd have to
2 look at the costs, not only to ComEd but to the
3 railroad class before deciding what further actions
4 to take. Is that a fair statement?

5 A Yes, and, you know, unless otherwise
6 directed we would certainly look at the cost benefit
7 before making any kind of decision like that.

8 JUDGE DOLAN: Any redirect?

9 MS. SCARSELLA: No redirect.

10 JUDGE DOLAN: Thank you, Mr. Born.

11 JUDGE SAINSOT: Thank you, Mr. Born.

12 Okay. Is there anything we need to
13 discuss before we adjourn?

14 JUDGE DOLAN: 9:00 a.m. Tuesday, entered and
15 continued.

16 (Whereupon, the above-entitled
17 matter was continued to
18 January 18, 2011, at 9:00 a.m.)

19

20

21

22